NATIONAL ASSEMBLY

FIRST SESSION THIRTY-FOURTH LEGISLATURE

Bill 125

Civil Code of Québec

Introduction

Introduced by
Mr Gil Rémillard
Minister of Justice

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EXPLANATORY NOTES

The object of this bill, the Civil Code of Québec, is to replace the Civil Code of Lower Canada, adopted in chapter 41 of the statutes of 1865 of the legislature of the Province of Canada, An Act respecting the Civil Code of Lower Canada, as amended from time to time, as well as chapter 39 of the statutes of 1980, An Act to establish a new Civil Code and to reform family law, and the Acts amending it, and chapter 18 of the statutes of 1987, An Act to add the reformed law of persons, successions and property to the Civil Code of Québec.

The Civil Code of Québec comprises 10 books: Book One: Persons; Book Two: The Family; Book Three: Successions; Book Four: Property; Book Five: Obligations; Book Six: Preference and Hypothec; Book Seven: Evidence; Book Eight: Prescription; Book Nine: Publicity of Rights; and Book Ten: Private International Law.

This bill will be completed by other proposed legislation concerning the implementation of the Civil Code reforms, particularly in respect of civil procedure, transitional legal measures and the updating of the statutes of Québec to take account of the new Civil Code.

BOOK ONE:

PERSONS

Book One is concerned with the law of persons. It takes up the provisions of chapter 18 of the statutes of 1987, modifying them in certain respects to take account of, among other things, the changes made to the Civil Code of Lower Canada by chapter 54 of the statutes of 1989.

The first of the five titles in Book One deals with the enjoyment and exercise of civil rights and sets down the general principles in this respect.

Title Two is devoted to some of the rights attached to the person. It has four chapters, under the headings of integrity of the person, which deals particularly with medical and other care, confinement in an establishment and psychiatric examination; respect of children's rights; respect of reputation and privacy; and respect of the body after death.

The four chapters in Title Three deal with certain particulars relating to the status of persons. Chapter I sets out the rules on assignment of name, use of name, change of name by way of administrative or judicial process, change of designation of sex on the act of civil status, and review of decisions. Chapter II sets down the rules on domicile and residence, and Chapter III is concerned with rules on absence, declaratory judgment of death, return, and proof of death. Chapter IV is devoted to civil status and is divided into six sections. These deal with the officer of civil status; the register of civil status; acts of civil status, namely, acts of birth, acts of marriage and acts of death; alteration of the register; access to the register; and, certain regulatory powers concerning custody of and access to the register.

Title Four sets out the rules on the capacity of persons. The first of its three chapters deals with majority and minority, and with emancipation. Chapter II, on tutorship to minors, is divided into seven sections, on the subjects of tutorship, legal tutorship, dative tutorship, administration of tutors, tutorship councils, supervision of tutorships, replacement of a tutor and the end of tutorship. Chapter III lays down the rules on protective supervision of persons of full age, setting out, in order, the general provisions, the rules on the institution of protective supervision, curatorship to persons of full age, tutorship to persons of full age, advisers to persons of full age, and the end of protective supervision.

The fifth and final Title of Book One is concerned with legal persons. It sets out the general rules on the juridical personality of legal persons in Chapter I, which deals with the constitution and kinds of legal persons, the effects of juridical personality, the obligations and disqualification of directors and judicial conferment of personality. Chapter II contains provisions applicable to certain legal persons, and deals with the functioning, dissolution and winding-up of legal persons.

BOOK TWO:

THE FAMILY

Book Two, on family law, takes up in substance the provisions of chapter 39 of the statutes of 1980, as amended over the years, and introduces some new rules, concerning filiation in particular, to take account of the development of medically assisted procreation.

The first of its four Titles deals with marriage, and is divided into seven chapters. The first three are respectively concerned with marriage and solemnization of marriage, proof of marriage and nullity of marriage. Chapter IV sets out the effects of marriage and contains provisions relating to the rights and duties of the partners, the family residence, the establishment and partition of the family patrimony, and the compensatory allowance. The fifth chapter contains some general rules governing the choice of matrimonial regime and the exercise of the rights and powers arising from the regime chosen. It also specifies the rules applicable to each regime, namely partnership of acquests, separation as to property and community regimes. Chapter VI deals with separation from bed and board, and Chapter VII, on dissolution of marriage, contains some rules enacted in 1980 in respect of the effects of divorce.

Title Two is devoted to filiation by blood or resulting from adoption. Chapter I, on filiation by blood, specifies what constitutes proof of filiation, the actions relating to it and its effects. Chapter II, on adoption, sets out conditions for adoption, specifies the nature of the order of placement and adoption judgment, indicates the effects of adoption and establishes the confidentiality of adoption files. Finally, Chapter III deals with some aspects of medically assisted procreation.

Titles Three and Four cover respectively the obligation of support and parental authority.

BOOK THREE:

SUCCESSIONS

Book Three contains the law of successions. Like Book One, it takes up in substance the provisions contained in chapter 18 of the statutes of 1987, together with the amendments to the Civil Code of Lower Canada enacted by chapter 55 of the statutes of 1989. It comprises six titles.

Title One determines the circumstances surrounding the opening of successions and establishes the qualifications required for succession.

Title Two, which deals with certain rights of succession, has four chapters. Chapter I is on seizin; Chapter II, on petition of inheritance and its effects on the transmission of property; Chapter III covers the right of option of successors and sets out the rules governing deliberation and option, and acceptance and renunciation of a succession; finally, Chapter IV establishes the rules relating to the survival of the obligation to provide support.

Title Three establishes the rules on legal devolution, and has four chapters. Chapter I determines heirship. Chapter II deals with relationship, defining degrees, generations and direct and collateral lines of ascent and descent. Chapter III defines representation, determines when it takes place and details its effects. Finally, Chapter IV establishes the order of devolution of successions, including devolution to the state.

The six chapters of Title Four deal, in order, with the nature of wills, the capacity required to make a will, the forms of wills, testamentary dispositions and legatees, the revocation of wills and legacies, and the proof and probate of wills.

Title Five, which has four chapters, sets out the rules on the liquidation of successions. Chapter I deals with the object of liquidation and the separation of patrimonies. Chapter II deals with the liquidator of the succession and lays down the rules on the appointment and responsibilities of the liquidator, the inventory of the property and the functions of the liquidator. Chapter III deals with the payment of the debts and particular legacies, and Chapter IV governs the end of the liquidation.

Title Six, with five chapters, contains the rules on partition. It deals with the right to partition and, as a corollary, the right to maintain undivided ownership. It also sets down the conditions of partition and the rules to be followed when making up the shares, making preferential allotments or contestation, and delivering titles. It also determines the obligation to return gifts, legacies and debts, the manner of making a return and the effects of the return. The two final chapters deal with the effects of partition and the nullity of partition.

BOOK FOUR:

PROPERTY

Book Four sets out the law of property. It takes up in substance the provisions contained in chapter 18 of the statutes of 1987, and incorporates amendments made to the Civil Code of Lower Canada by chapter 16 of the statutes of 1988.

The first of its seven titles is concerned with the kinds of property and its appropriation. The four chapters deal, in order, with the kinds of property, that is, movable and immovable property; property in relation to its proceeds; property in relation to persons having rights in it or possession of it, and certain de facto *relationships concerning property. This last chapter sets out the rules on possession and those on the acquisition of vacant property, whether it be ownerless property or lost or forgotten movable property.*

Title Two is concerned with ownership. Chapter I defines the nature and extent of the right of ownership, while Chapter II sets out the rules on immovable and movable accession. The final chapter, Chapter III, first sets out a general rule on normal neighbourhood annoyances, followed by specific rules on the ownership of immovables, such as limits and boundaries of land, waters, trees, access to and protection of another's land, view, right of way, and common fences and works.

Title Three is devoted to the principal special modes of ownership. After defining the nature of undivided co-ownership and of so-called divided co-ownership, it devotes one chapter each to the rules on undivided co-ownership, divided co-ownership and superficies.

Title Four governs dismemberments of the right of ownership. Its four chapters deal, in order, with usufruct, use, servitudes and emphyteusis.

Title Five sets out rules regarding restrictions on the free disposition of certain property. Chapter I contains the rules on stipulations of inalienability, and Chapter II, those on substitution.

Title Six deals with certain patrimonies by appropriation. Chapter I defines the foundation, while Chapter II defines the trust, specifying the various kinds of trust and their duration, setting out the rules on their administration, and providing for termination of the trust and changes to the trust and to the patrimony.

The seventh and final title, divided into four chapters, lays down the rules governing administration of the property of others. The first

chapter contains general provisions, while Chapter II determines the scope of the activities of the administrator of the property of others according to whether he has simple or full administration. Chapter III, on the rules of administration, sets out the obligations of the administrator towards the beneficiary and third persons and those of the beneficiary towards third persons, together with the rules on inventory, security and insurance, joint administration and delegation, presumed sound investments, apportionment of profit and expenditure, and the annual account. Chapter IV, on the termination of administration, sets out the causes terminating administration and the rules on the rendering of account and delivery of the property.

BOOK FIVE:

OBLIGATIONS

Book Five deals with the law of obligations, and comprises two titles: the first on obligations in general, and the second on nominate contracts.

TITLE ONE:

OBLIGATIONS IN GENERAL

Title One of Book Five sets out the elements of the general theory of obligations. It is divided into nine chapters.

Chapter I, an introductory chapter, lays down the fundamental principles of the general theory of obligations.

Chapter II, entitled "Contracts", comprises five sections. The first two sections contain general provisions, establishing that contracts are subject to the rules set out in the chapter, and dealing with the nature of a contract and certain classes of contracts. The third section, on the formation of contracts, lays down the conditions of formation of a contract, namely, consent, capacity, cause, object and, in some cases, form, and establishes sanctions for failure to observe them. The fourth section is devoted to the rules of interpretation of contracts, while the final section deals with the effects of a contract with respect to the parties and to third persons, together with the special effects of certain contracts.

Chapter III brings together the main rules on civil liability. It deals with the conditions of liability, certain cases of exoneration from responsibility and the apportionment of responsibility.

Chapter IV completes the presentation of the principal sources of obligations, dealing successively with the management of the business of another, reception of a thing not due and unjustified enrichment.

Chapter V of this title is devoted to the modalities of obligations. It deals in turn with obligations with simple modalities, comprising conditional obligations and obligations with a term, and obligations with complex modalities, including joint, divisible, indivisible, solidary, alternative and facultative obligations.

Chapter VI, dealing with the performance of obligations, is divided into three sections. Section I sets out the rules on payment, including the rules on imputation of payment and on tender and deposit. Section II, having to do with the exercise of the right to enforce performance, deals with exception for nonperformance, right of retention and putting in default, and with the various remedies available to the creditor to force specific performance of the obligation, to obtain dissolution or termination of the contract and reduction of the obligation, or to obtain its performance by equivalence. Finally, Section III is devoted to measures for protection of the right to performance of the obligation, namely, conservatory measures, the oblique action and the Paulian or direct action.

Chapter VII concerns transmission and transfer of obligations. It presents, in order, the rules on assignment of a claim, subrogation, novation and delegation.

Chapter VIII is devoted to the causes of extinction of obligations, and deals specifically with compensation, confusion, release and impossibility of performance.

The final chapter of Title One contains the principal rules respecting the restitution of prestations following retroactive annulment of a judicial act.

TITLE TWO:

NOMINATE CONTRACTS

Title Two of Book Five, which takes up the special rules relating to so-called nominate contracts, is divided into eighteen chapters.

Chapter I, on sale, has three sections. The first is of a general nature, dealing among other things with the promise of sale, the sale of property of another, the obligations of the seller and buyer, and special rules regarding the exercise of the rights of the parties. This

first section also deals with various modes of sale, such as trial sale, instalment sale, sale with a right of redemption and auction sale, and it lays down rules governing the sale of an enterprise and the sale of certain incorporeal rights, specifically the sale of rights of succession and the sale of litigious rights. Section II lays down special rules regarding the sale of immovables used for residential purposes, while Section III is devoted to contracts akin to contracts of sale, that is, exchange, giving in payment and alienation for rent.

Chapter II, on gifts, deals with the nature and scope of the contract of gift and of certain conditions pertaining to gifts, including rules governing their validity and form. It also deals with the rights and obligations of the parties, revocation of the gift for ingratitude and gifts made by marriage contract.

Chapter III sets out separately the principal rules governing the contract of leasing.

Chapter IV, devoted to lease, deals first with the nature of lease, the rights and obligations resulting from a lease and the termination of the lease. It then sets out special provisions for the lease of a dwelling, including, among others, those governing the lease, the rent, the condition of the dwelling, certain changes to the dwelling, access to and visit of the dwelling, the right of maintenance in occupancy and termination of the lease. Lastly, it sets out specific rules for leases with educational institutions, leasing of dwellings in low-rental housing, and leasing of land for mobile homes.

Chapter V, on affreightment, contains general rules applicable to all contracts of affreightment, and special rules relating to bareboat charters, time charters and voyage charters.

Chapter VI, on carriage, sets out the rules applicable to all means of transportation, whether of persons or of property, and the special rules governing carriage of goods by water.

Chapter VII deals with the contract of employment.

Chapter VIII, entitled "Contract for Work", contains the rules governing job contracts and contracts for services, and includes, among others, special rules relating to works, in particular complex immovable or movable works.

Chapter IX, on mandate, deals, in order, with the nature and scope of mandate, the mutual obligations of the parties, the obligations of the parties towards third persons and the termination of mandate. It includes specific rules to cover incapacity of the mandator.

Chapter X, devoted to partnership and association, contains specific provisions on general partnerships, limited partnerships, joint ventures and associations.

Chapter XI concerns deposit, dealing with deposit in general, necessary deposit, deposit with inkeeper and sequestration.

Chapter XII concerns the contract of loan, giving special treatment to loan for use and simple loan.

Chapter XIII, devoted to suretyship, contains rules on the nature, object and extent of suretyship, and special rules relating to the effects and the termination of suretyship.

Chapter XIV, on annuity, deals with the nature, scope and certain effects of the contract of annuity.

Chapter XV, on insurance, comprises four sections. Section I contains general provisions dealing with the nature of the insurance contract, the classes of insurance, the formation and content of the contract, and the representations and warranties of the client in non-maritime insurance. Section II, dealing with insurance of persons, contains rules on, among other things, the content of the policy, insurable interest, representation of age and risk, effective date, performance under the terms of the policy, designation of beneficiaries and subrogated policyholders. Section III is devoted to damage insurance and sets out common provisions and special rules relating to property insurance and to liability insurance. The final section is devoted to marine insurance, and takes up in substance the provisions of the British Marine Insurance Act of 1906.

The final three chapters of Title Two are devoted to gaming and wagering contracts, compromise and arbitration agreements.

BOOK SIX:

PREFERENCE AND HYPOTHEC

Book Six pursues the reform of the Civil Code by revising the existing body of legal rules governing preference and hypothec. It comprises four titles.

Title One, on the common pledge of creditors, preserves, with certain alterations, the rule that the property of a debtor is charged with the performance of his obligations and is the common pledge of his creditors.

Title Two, on preferred claims, preserves the existing right to preference, without publication, by virtue of a preferred claim, but limits this to particular claims in the cases expressly provided for in the Code.

Title Three, on hypothecs, comprises five chapters. Chapter I consists of general provisions dealing with the nature of a hypothec, the kinds of hypothec and the object and extent of hypothecs. Chapter II, on conventional hypothecs, indicates who may grant the different kinds of hypothec, and sets out some rules concerning obligations secured by hypothec. It also sets out other rules applicable to the various kinds of hypothec: hypothecs on immovables, hypothecs on movables, with or without delivery, and so-called floating hypothecs. Chapter III deals with legal hypothecs, and Chapter IV with specific effects of hypothecs. The last chapter, Chapter V, deals with the exercise of hypothecary rights enabling the creditor to enforce his security. Section I lays down some general rules, and Section II establishes the general conditions for exercising the rights. Section III is concerned with measures preceding the exercise of hypothecary rights, including prior notice of the exercise of such rights to be given by the creditor, the rights of the debtor or the person against whom the right is exercised, and surrender. The last four sections set out specific rules governing each hypothecary right: taking possession for administration purposes, taking in payment of the property, sale of the property by the creditor or sale under judicial authority.

Finally, Title Four lays down the rules on extinction of preferences and hypothecs.

BOOK SEVEN:

EVIDENCE

The object of Book Seven is to reform the law of evidence. It comprises three titles.

Title One, dealing with the general rules of evidence, has two chapters. Chapter I is concerned with the object and burden of proof, while Chapter II lays down the rules on judicial notice.

Title Two deals with the means of proof. It is divided into five chapters, each concerned with one of the five means of proof. Chapter I, on proof by writings, is divided into seven sections, dealing respectively with copies of statutes, authentic acts, semi-authentic acts, private writings and unsigned writings, computerized records, and reproduction of writings. Chapter II, devoted to testimony,

defines testimony and its probative force. Chapters III and IV, on presumption and admission respectively, define and distinguish between the different kinds of presumptions and admissions and determine their probative force. Chapter V introduces a new means of proof, the production of material things, into the Civil Code of Québec.

Title Three, concerning the admissibility of evidence and proof, contains three chapters. The first, dealing with evidence, lays down the general principle of admissibility. The second sets out the rules on the admissibility of means of proof, and the third introduces the rules on certain declarations.

BOOK EIGHT:

PRESCRIPTION

The object of Book Eight is to reform the law of prescription.

The first of its three titles sets down the rules on prescription. It comprises four chapters, dealing respectively with the general rules applicable to acquisitive prescription and extinctive prescription, renunciation of prescription, interruption of prescription and suspension of prescription.

Title Two, comprising two chapters, is devoted to acquisitive prescription. The first chapter specifies the conditions under which acquisitive prescription operates, while the second determines the periods required for such prescription.

Title Three sets out the special rules relating to extinctive prescription.

BOOK NINE:

PUBLICITY OF RIGHTS

Book Nine presents the reformed law relating to the publicity of rights, which results essentially from entry of the rights in the proper register. The Book is divided into five titles.

Title One defines the field to which publication applies, indicating the rights which must be published.

Title Two deals with the effects of publication, including the setting up of registered rights against third persons, the ranking of rights and the protection of third persons in good faith. It also contains rules on advance entry.

Title Three sets out the mechanisms of registration. Chapter I indicates the registers in which rights are entered and deals in turn with the land register, the register of real movable rights and the register of personal rights. Chapter II deals with the requirements for registration, in particular attestations, and lays down some specific rules governing registration. Chapter III sets out the duties and functions of the registrar, and Chapter IV deals with the address file. Finally, Chapter V is concerned with the framework of rules to be established to govern application of the provisions of this Book.

Title Four, on registration of immovables, deals both with the cadastral plan and with amendments to it. It also provides for the transfer of rights, and lays down rules governing the alienation of parts of lots.

Finally, Title Five, on the cancellation of rights, deals in turn with the grounds for cancellation, special cases of cancellation and the procedure and effects of cancellation.

BOOK TEN:

PRIVATE INTERNATIONAL LAW

Book Ten introduces into the Civil Code a set of rules concerning private international law. It contains four titles.

Title One brings together all the general provisions relating to the basic principles of this branch of civil law.

Title Two establishes the rules governing conflict of laws, indicating which legal system has jurisdiction to solve cases involving extraneous elements. This title is divided into four chapters, corresponding to the primary divisions of civil law, namely, the status of persons, the status of property, the status of obligations and the status of procedure. Each chapter is divided into two sections, the first containing general provisions and the second containing special provisions, except the chapter on status of procedure, which has only two articles.

Title Three deals with the international jurisdiction of Québec authorities, judicial or administrative courts or tribunals or various administrative authorities. It is divided into two chapters, one containing general provisions, and the other containing special provisions relating to matters of an extrapatrimonial or patrimonial nature, and to real actions.

Title IV lays down the rules applicable to the recognition and enforcement of foreign decisions and those regarding the jurisdiction

of foreign judicial and administrative authorities. Each of these two subjects is dealt with in a separate chapter.

Bill 125

Civil Code of Québec

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

THE CIVIL CODE OF QUÉBEC

PRELIMINARY PROVISION

The Civil Code of Québec, in harmony with the Charter of human rights and freedoms and the general principles of law, governs persons, relations between persons, and property.

The Civil Code comprises a body of rules which, in all matters within the letter, spirit or object of its provisions, lays down the *droit commun*, expressly or by implication. In these matters, the Code is the foundation of all other laws, although other laws may complement the Code or make exceptions to it.

BOOK ONE

PERSONS

TITLE ONE

ENJOYMENT AND EXERCISE OF CIVIL RIGHTS

1. Every human being possesses juridical personality and has the full enjoyment of civil rights.

2. Every person has a patrimony.

The patrimony may be divided or appropriated to a purpose, but only to the extent provided by law.

3. Every person is the holder of personality rights, such as the right to life, the right to the inviolability and integrity of his person, and the right to respect of his name, reputation and privacy.

These rights are inalienable.

4. Every person is fully able to exercise his civil rights.

In certain cases, the law provides for representation or assistance.

5. Every person exercises his civil rights under the name assigned to him and stated in his act of birth.

6. Every person is bound to exercise his civil rights in good faith.

7. No right may be exercised with the intent of injuring another or, without a serious and legitimate interest, in a way that is to his prejudice.

8. No person may renounce the exercise of his civil rights, except to the extent consistent with public order.

9. In the exercise of civil rights, derogations may be made from those rules of this Code which supplement intention, but not from those concerning public order.

TITLE TWO

CERTAIN PERSONALITY RIGHTS

CHAPTER I

INTEGRITY OF THE PERSON

10. Every person is inviolable and is entitled to the integrity of his person.

Except in cases provided for by law, no interference may be done to his person without his free and enlightened consent.

SECTION I

CARE

11. No person may be made to undergo care of any nature, whether for examination, specimen taking, removal of tissue, treatment or any other act, except with his consent.

If the person concerned is unable to give or refuse his consent to care, a person authorized by law or by mandate given for the eventuality of his inability may do so in his place.

12. A person who gives his consent to or refuses care for another person is bound to act in the sole interest of that person, taking into account, as far as possible, any wishes the latter may have expressed.

If he gives his consent, he must ensure that the care is beneficial notwithstanding the gravity and permanence of certain of its effects, that it is advisable in the circumstances and that the risks incurred are not disproportionate to the anticipated benefit.

13. Consent to medical care is not required in case of emergency if the life of the person is in danger or his integrity is threatened and his consent cannot be obtained in due time.

It is required, however, where the care is unusual or has become useless or where its consequences could be intolerable for the person.

14. Consent to care required by the state of health of a minor is given by the person having parental authority or by his tutor.

A minor fourteen years of age or over, however, may give his consent alone to such care. If his state requires that he remain in a health or social services establishment for over twelve hours, the person having parental authority or tutor shall be informed of that fact.

15. Where it is ascertained that a person of full age is unable to give his consent to care required by his state of health, consent is given by his mandatary, tutor or curator. If the person of full age is not so represented, consent is given by his spouse or, if he has no spouse or his spouse is prevented from giving consent, it is given by a close relative or a person who shows a special interest in the person of full age.

16. The authorization of the court is required where the person who may give consent to care required by the state of health of a minor

or a person of full age who is unable to give his consent is prevented from doing so or, without justification, refuses to do so; it is also required where a person of full age who is unable to give his consent categorically refuses to receive care, except in the case of hygienic care or emergency.

The authorization of the court is required, furthermore, to cause a minor fourteen years of age or over to undergo care he refuses, except in the case of emergency if his life is in danger or his integrity threatened, in which case the consent of the person having parental authority or the tutor is sufficient.

17. Consent to care not required by the state of health of a minor fourteen years of age or over is given jointly by the minor and by the person having parental authority or tutor.

The minor may give his consent alone to such care, however, if it is benign or entails no serious risk to his health nor any grave and permanent effect.

18. Where the person is under fourteen years of age or is unable to give his consent, consent to care not required by his state of health is given by the person having parental authority or the mandatary, tutor or curator; the authorization of the court is also required.

The person having parental authority or the mandatary, tutor or curator may give his consent to the care without the authorization of the court, however, if it is benign or entails no serious risk to health nor any grave and permanent effect.

19. A person of full age who is able to give his consent may alienate part of his body *inter vivos*, provided the risk incurred is not disproportionate to the benefit that may reasonably be anticipated.

A minor or a person of full age who is unable to give his consent may, with the consent of the person having parental authority, mandatary, tutor or curator and with the authorization of the court, alienate a part of his body only if that part is capable of regeneration and provided that no serious risk to his health results from this.

20. A person of full age who is able to give his consent may submit to an experiment provided that the risk incurred is not disproportionate to the benefit that can reasonably be anticipated.

21. A minor or a person of full age who is unable to give his consent may be submitted to an experiment only in the absence of

serious risk to his health and of objection on his part, provided that he understands the nature and consequences of the act; the consent of the person having parental authority or of the mandatary, tutor or curator is required.

Furthermore, a benefit to the health of the person concerned or of persons of the same group must be expectable; in the first case, the authorization of the court is required and in the second, the research project as part of which the experiment is carried out must be approved by the Minister of Health and Social Services.

Innovative care required by the state of health of a person who submits to such care is not considered to be an experiment.

22. A part of the body, whether an organ, tissue or other substance, removed from a person as part of the care he receives may be used for purposes of research, unless the person concerned or the person qualified to give consent for him objects.

23. When the court is called upon to rule on an application for authorization with respect to the alienation of a part of the body, medical care or an experiment, it shall obtain the opinions of experts, of the person having parental authority, of the mandatary, of the tutor or the curator and of the tutorship council; it may also obtain the opinion of any person who shows a special interest in the person concerned by the application.

The court is also bound to obtain the opinion of the person concerned unless that is impossible, and to respect his refusal unless the care is required by his state of health.

24. Consent to the alienation *inter vivos* of a part of a person's body, to medical care not required by a person's state of health or to an experiment shall be given in writing.

It may be withdrawn at any time, even verbally.

25. The alienation by a person of a part or product of his body shall be gratuitous; it shall not be repeated if it involves a risk to his health.

SECTION II

CONFINEMENT IN AN ESTABLISHMENT AND PSYCHIATRIC EXAMINATION

26. No person may be confined in a health or social services establishment with a view to his undergoing a psychiatric examination

or in consequence of a psychiatric examination report without his consent or without authorization by law or the court.

Consent may be given by the person having parental authority or, in the case of a person of full age unable to express his wishes, by his mandatary, tutor or curator. Such consent may be given by the representative only if the person concerned does not object.

27. Every person confined in a health or social services establishment shall be informed beforehand by the establishment of the program of medical or other care established for him and of any important change in the program or in his living conditions.

If the confined person is under fourteen years of age or is incapable of discernment, the information shall be given to the person having parental authority and to the tutor or curator if any or, failing them, to the close relatives or friends.

28. Where the court has serious reasons to believe that a person is a danger to himself or to others owing to his mental state, it may, on the application of a physician or an interested person and notwithstanding the absence of consent, order that he be confined in a health or social services establishment to undergo a psychiatric examination. The application, if refused, cannot be submitted again except where different facts are alleged.

Where the danger is imminent, the person may be admitted for confinement without the authorization of the court, as provided for in the Act respecting the protection of certain mentally ill persons.

29. A decision ordering a person's confinement with a view to his undergoing a psychiatric examination shall also order that a report be made to the court within seven days. It may, where applicable, authorize any other medical examination rendered necessary by the circumstances.

In no case may the report be disclosed to anyone but the parties without the authorization of the court.

30. The report of the physician shall deal in particular with the necessity of confining the person in an establishment if he is a grave danger to himself or to others, with the ability of the person who has undergone the examination to care for himself or to administer his property and, where applicable, with the advisability of instituting protective supervision of the person of full age.

31. Where the report finds that it is necessary to confine the person in an establishment, there shall be no confinement without consent, except by authorization of the court.

The judgment ordering that a person be confined shall also fix the duration of the confinement. In all cases, the person shall be discharged as soon as the confinement is no longer justified, even if the fixed period has not expired.

CHAPTER II

RESPECT OF CHILDREN'S RIGHTS

32. Every child has a right to the protection, security and attention that his parents or the persons acting in their stead are able to give to him.

33. Every decision concerning a child shall be taken in light of the child's interests and respect of his rights.

Consideration shall be given, in addition to the moral, intellectual, emotional and material needs of the child, to the child's age, health, personality and family environment, and to the other aspects of his situation.

34. The court shall, in every application brought before it affecting the interest of a child, give the child an opportunity to be heard if his age and power of discernment allow it.

CHAPTER III

RESPECT OF REPUTATION AND PRIVACY

35. Every person has a right to respect of his reputation and privacy.

No one may invade the privacy of a person without the consent of the person or his heirs or without authorization by law.

36. The following acts, in particular, may be considered as an invasion of the privacy of a person:

(1) Entering or taking anything in his dwelling;

(2) Intentionally intercepting or using his private communications;

(3) Appropriating or using his image or voice while he is in private premises;

(4) Observing him in his private life by any means;

(5) Using his name, image, likeness or voice for a purpose other than the legitimate information of the public;

(6) Using his correspondence, manuscripts or other personal documents.

37. Every person who establishes a file on another person shall have a serious and legitimate interest for doing so and shall, in establishing and using the file, act in good faith and with prudence so as not to damage the reputation or invade the privacy of others.

38. Except as otherwise provided by law, any person may, free of charge, examine and cause the rectification of a file kept on him by another person with a view to making a decision in his regard or to informing a third person; he may also cause a copy of it to be made at reasonable cost. The information contained in the file must be accessible in an intelligible transcript.

39. A person keeping a file on a person may deny him access to information contained in the file where he has a serious and legitimate reason to do so or where the information concerns third persons.

The keeper of the file may deny access to the whole file where the file consists for the greater part of information that must remain confidential.

40. Every person may cause information which is contained in a file concerning him and which is inaccurate, incomplete or equivocal to be rectified; he may also cause obsolete information or information not justified by the purpose of the file to be deleted, or deposit his written comments in the file.

Notice of the rectification shall be given without delay to every person having received the information in the preceding six months and, where applicable, to the person who is that person's source. The same rule applies to an application for rectification, if it is contested.

41. Where the law does not provide the conditions and modalities of exercise of the right of examination or rectification of a file, the court shall determine them on application.

Similarly, if it becomes difficult to exercise those rights, the court shall settle the difficulty on application.

CHAPTER IV

RESPECT OF THE BODY AFTER DEATH

42. A person of full age may determine the nature of his funeral and the disposal of his body; a minor may also do so with the written consent of the person having parental authority or his tutor. Failing the expressed wishes of the deceased, the wishes of the heirs or successors prevail; in both cases, the heirs and successors are bound to act; the expenses are charged to the succession.

43. A person of full age or a minor fourteen years of age or over may, for medical or scientific purposes, give his body or authorize the removal of organs or tissues therefrom. A minor under fourteen years of age may also do so with the consent of the person having parental authority or of his tutor.

The wish is expressed verbally before two witnesses, or in writing, and may be revoked in the same manner. The expressed wish shall be followed, except for a compelling reason.

44. A physician may remove a part of the body of a deceased person if, in the absence of knowledge or presumed knowledge of the wishes of the deceased, he obtains the consent of the person who could give consent to care or could have given it.

Consent is not required where two physicians attest in writing to the impossibility of obtaining it in due time, the urgency of the operation and the serious hope of saving a human life or of improving its quality to an appreciable degree.

45. No part may be removed before the death of the donor is attested by two physicians who do not participate either in the removal or in the transplantation.

46. An autopsy may be performed in the cases provided for by law or with the written consent of the deceased; it may also be performed with the consent of the spouse or of a close relative of the deceased. The person requesting the autopsy has a right to receive a copy of the report.

47. The court may, on the application of a physician or any interested person, order the performance of an autopsy on the

deceased if the circumstances surrounding his death justify it; the coroner may do likewise in the cases provided for by law.

48. No person may embalm, bury or cremate a body before an attestation of death has been drawn up.

49. Subject to compliance with the prescriptions of law, it is permissible to disinter a body on the order of a court, on the change of destination of its burial place or in order to bury it elsewhere or to repair the sepulture.

Disinterment is also permissible on the lawful order of a coroner.

TITLE THREE

CERTAIN PARTICULARS RELATING TO THE STATUS OF PERSONS

CHAPTER I

NAME

SECTION I

ASSIGNMENT OF NAME

50. Every person has a name which is assigned to him at birth and is stated in his act of birth.

The name includes the surname and given names.

51. A child shall be given, at the choice of his father and mother, one or more given names and the surname of one of them or a surname consisting of not more than two parts taken from the surnames of his father and mother.

52. In case of disagreement over the choice of a surname, the registrar of civil status shall assign to the child a surname consisting of two parts, one part being taken from the surname of his father and the other from that of his mother, according to their choice, respectively.

If the disagreement is over the choice of a given name, he shall assign to the child two given names chosen by his father and his mother, respectively.

53. If only the paternal or the maternal filiation of a child is established, he bears the surname of his father or of his mother, as

the case may be, and one or more given names chosen by his father or mother.

A child whose filiation is not established bears the name assigned to him by the registrar of civil status.

54. Where the name chosen by the father and mother contains an odd compound surname or odd given names which invite ridicule or which may discredit the child, the registrar of civil status may suggest to the parents that they change the child's name.

If they refuse to do so, the registrar has authority to bring his dispute with the parents before the court and demand the assignment to the child of the surname of one of his parents or of two given names in common use, as the case may be.

SECTION II

USE OF NAME

55. Every person has a right to respect of his name.

He may use one or more of the given names stated in his act of birth.

56. A person who uses a name other than his own is responsible for any resulting confusion or damage.

The holder of a name as well as his spouse or close relatives may object to such use and demand redress for the damage caused.

SECTION III

CHANGE OF NAME

§ 1.—*General provision*

57. No change may be made to a person's name, whether of his surname or given name, without the authorization of the registrar of civil status or the court, in accordance with the provisions of this section.

§ 2.—*Change of name by way of administrative process*

58. The registrar of civil status has competence to authorize a change of name where the name generally used does not correspond to that appearing in the act of birth, where the name is of foreign origin or too difficult to be pronounced or written in its original form or where

the name invites ridicule or has become infamous. The registrar also has competence where a person applies for the addition to the surname of a part taken from the surname of the father or mother.

The competence of the registrar also includes all other cases which do not come under the exclusive jurisdiction of the court.

59. A person of full age who is a Canadian citizen and who has been domiciled in Québec for at least one year may apply for the change of his name. If the change applied for concerns the surname, the application is also valid for his minor children who bear the same surname or part of that surname.

A person may also apply for the change of the given names of his minor children or the addition of a part to their surname taken from his own surname.

60. The tutor of a minor may apply for the change of the name of his pupil, if the latter is a Canadian citizen and has been domiciled in Québec for at least one year.

61. A person applying for a change of name shall state his reasons and give the name of his father and mother, the name of his spouse and of his children and, where applicable, the name of his children's other parent.

The person shall attest under oath that the reasons stated and the information given are true, and shall append all the necessary documents to his application.

62. Except for a compelling reason, no change of name of a minor child may be granted if the tutor or the minor, if fourteen years of age or over, has not been notified of the application or objects to it.

However, in the case of an application for the addition to the surname of the minor of a part taken from the surname of the father or mother, only the minor has the right to object.

63. Before authorizing a change of name, the registrar of civil status shall satisfy himself that the notices of the application have been published, unless a special exemption from publication has been granted by the Minister of Justice for reasons of public interest; he shall give to third persons who so request the opportunity to state their views.

The registrar may also require the applicant to furnish any additional explanation and information he may need.

64. All other rules respecting the procedure for a change of name, the publication of the application and decision, and the duties payable shall be determined by the Minister of Justice and published in the *Gazette officielle du Québec*.

§ 3.—*Change of name by way of judicial process*

65. The court has exclusive jurisdiction to authorize the change of the name of a child in the case of a change of filiation, of abandonment by the father or mother, or of deprivation of parental authority.

66. A minor fourteen years of age or over acting alone may present an application for a change of name, but he shall in such a case give notice of the application to the person having parental authority and to the tutor.

The minor acting alone may also object to an application.

§ 4.—*Effects of a change of name*

67. A change of name produces its effects from the time the judgment authorizing it acquires status as *res judicata* or from the time that the decision of the registrar of civil status is no longer open to review.

Notice of the change shall be published in the *Gazette officielle du Québec* unless a special exemption from publication is granted by the Minister of Justice for reasons of public interest.

68. A change of name nowise alters the rights and obligations of a person.

69. All documents made under the former name of a person are deemed to be made under his new name.

The person or any interested third person may, at his expense and upon furnishing proof of the change of name, demand that the documents be rectified by indicating the new name.

70. Any proceedings to which a person who has changed his name is a party shall be continued under his new name, without continuance of suit.

SECTION IV

CHANGE OF DESIGNATION OF SEX

71. Every person who has successfully undergone medical treatments and surgical operations involving a structural modification of the sexual organs intended to change his secondary sexual characteristics may have the designation of sex which appears on his act of birth and, if necessary, his given names changed.

Only an unmarried person of full age who has been domiciled in Québec for at least one year and is a Canadian citizen may make an application under this article.

72. The application shall be made to the registrar of civil status; it shall be accompanied with, in addition to the other relevant documents, a certificate of the attending physician and an attestation by another physician practising in Québec to the effect that the treatments and operations were successful.

73. The application is subject to the same procedure as an application for a change of name and to the same publication requirements and the same duties. The rules relating to the effects of a change of name, adapted as required, apply to a change of designation of sex.

In the register of civil status, however, the designation is entered only in the act of birth of the person concerned.

SECTION V

REVIEW OF DECISIONS

74. Any decision of the registrar of civil status relating to the assignment of a name or to a change of name or designation of sex may be reviewed by the court, on the application of an interested person.

CHAPTER II

DOMICILE AND RESIDENCE

75. The domicile of a person, for the exercise of his civil rights, is at the place of his principal establishment.

76. Change of domicile is effected by actual residence in another place coupled with the intention of the person to make it the seat of his principal establishment.

The proof of such intention results from the declarations of the person and from the circumstances of the case.

77. The residence of a person is the place where he ordinarily resides in fact; if a person has more than one residence, his principal residence is considered in establishing his domicile.

78. A person whose domicile cannot be determined with certainty is deemed to be domiciled at the place of his residence.

A person who has no residence is deemed to be domiciled at the place where he lives or, if that is unknown, at the place of his last known domicile.

79. A person called to a temporary or revocable public office retains his domicile, unless he manifests a contrary intention.

80. An unemancipated minor is domiciled with his tutor.

Where the father and mother exercise the tutorship but have no common domicile, the minor is presumed to be domiciled with the parent with whom he usually resides unless the court has fixed the domicile of the child elsewhere.

81. A person of full age under tutorship is domiciled with his tutor; a person under curatorship is domiciled with his curator.

82. Spouses may have separate domiciles without prejudice to the rules respecting their living together.

83. The parties to a juridical act may, in writing, elect domicile with a view to the execution of the act or the exercise of the rights arising from it.

Election of domicile is not presumed.

CHAPTER III

ABSENCE AND DEATH

SECTION I

ABSENCE

84. An absentee is a person who, while he had his domicile in Québec, ceased to appear there without advising anyone, and of whom it is unknown whether he is still alive.

85. An absentee is presumed to be alive for seven years following his disappearance, unless proof of his death is made before then.

86. A tutor may be appointed to an absentee who has rights to be exercised or property to be administered if the absentee did not designate an administrator to his property or if the administrator is unknown, refuses or neglects to act or is prevented from acting.

87. Any interested person, including the Public Curator or a creditor of the absentee, may apply for the institution of tutorship to the absentee.

Tutorship is awarded by the court on the advice of the tutorship council and the rules respecting tutorship to minors, adapted as required, apply to tutorship to absentees.

88. The court, on the application of the tutor or of an interested person and according to the importance of the property, shall fix the amounts that it is expedient to allocate to the expenses of the marriage, to the maintenance of the family or to the payment of the obligation of support of the absentee.

89. The spouse of or the tutor to the absentee may, after one year of absence, apply to the court for a declaration that the patrimonial rights of the spouses may be liquidated.

The tutor shall obtain the authorization of the court to accept or renounce the partition of the acquests of the spouse of the absentee or otherwise decide on the other rights of the absentee.

90. Tutorship to an absentee is terminated by his return, by the appointment by him of an administrator to his property, by declaratory judgment of death or by proof of his death.

91. In case of superior force, a tutor may also be appointed, as to an absentee, to a person prevented from appearing at his domicile and who is unable to appoint an administrator to his property.

SECTION II

DECLARATORY JUDGMENT OF DEATH

92. A declaratory judgment of death may be pronounced on the application of any interested person, including the Public Curator, seven years after disappearance.

It may also be pronounced before that time where the death of a person domiciled in Québec or presumed to have died there may be held to be certain although it is impossible to draw up an attestation of death.

93. A declaratory judgment of death shall state the name and sex of the person presumed dead and, if known, the place and date of his birth and marriage, the place of his last domicile, the names of his father, mother and spouse, and the date, time and place of his death.

A copy of the judgment shall be transmitted without delay to the chief coroner by the clerk of the court that rendered the decision.

94. The date fixed as the date of death is either the date occurring on the expiry of seven years from the disappearance or the last news of the absentee, or an earlier date if the presumptions drawn from the circumstances allow the death of a person to be held for certain at that date.

In the absence of other proof, the place fixed as the place of death is that where the person was seen for the last time.

95. A declaratory judgment of death produces the same effects as death.

96. If the date of death is proved to precede that fixed by the declaratory judgment of death, the dissolution of the matrimonial regime is retroactive to the true date of death and the succession is open from that date.

If the date of death is proved to follow that fixed by the declaratory judgment of death, the dissolution of the matrimonial regime is retroactive to the date fixed by the judgment but the succession is open only from the true date of death.

Relations between the apparent heirs and the true heirs are governed by the rules contained in the Book on Obligations which concern the restitution of prestations.

SECTION III

RETURN

97. Where a person declared dead by judgment returns, the effects of the judgment cease but the marriage remains dissolved.

However, if difficulties arise over custody of the children or support, they shall be settled as in the case of separation from bed and board.

98. A person who has returned shall apply to the court for annulment of the declaratory judgment of death and rectification of the register of civil status. He may also, subject to the rights of third persons, apply to the court for the cancellation or rectification of the particulars or entries made following the declaratory judgment of death and nullified by his return, as if they had been made without right.

Any interested person may make the application to the court at the expense of the person who has returned if the latter fails to act.

99. A person who has returned recovers his property according to the rules contained in the Book on Obligations which concern the restitution of prestations. He shall reimburse the persons who, in good faith, were in possession of his property and who discharged his obligations otherwise than with his property.

100. Any payment made to the heirs or legatees by particular title of a person who has returned after a declaratory judgment of death but before the particulars or entries are cancelled or rectified is valid and constitutes a valid discharge.

101. An apparent heir who learns that the person declared dead is alive retains possession of the property and acquires the fruits thereof until the person who has returned applies to resume possession of his property.

SECTION IV

PROOF OF DEATH

102. Proof of death is established by an act of death, except in cases where the law authorizes another mode of proof.

CHAPTER IV

REGISTER AND ACTS OF CIVIL STATUS

SECTION I

OFFICER OF CIVIL STATUS

103. The registrar of civil status is the sole officer of civil status.

The registrar is responsible for drawing up and altering acts of civil status, for the keeping and custody of the register of civil status and for providing access to it.

SECTION II

REGISTER OF CIVIL STATUS

104. The register of civil status consists of all the acts of civil status and the juridical acts by which they are altered.

105. The register of civil status shall be kept in duplicate; one duplicate shall consist of all the written documents and the other shall be kept on a data retrieval system.

If there is any variance between the duplicates of the register, that in writing prevails but in all cases, one of the duplicates may be used to reconstitute the other.

106. One version of the register of civil status shall also be kept in a different place from the place where the duplicates of the register are kept.

SECTION III

ACTS OF CIVIL STATUS

§ 1.—*General provisions*

107. The only acts of civil status are acts of birth, acts of marriage and acts of death.

They contain only what is required by law, and are authentic.

108. The acts of civil status shall be drawn up without delay from the attestations, declarations and juridical acts received by the registrar of civil status, regarding births, marriages and deaths occurring in Québec or concerning persons domiciled in Québec.

109. The registrar of civil status shall prepare the act of civil status by signing the declaration he receives, or by drawing it up himself in accordance with the judgment or other act he receives.

He shall date the declaration, affix a registration number to it and place it in the register of civil status. The declaration thereupon constitutes an act of civil status.

110. Every attestation and declaration shall indicate the date on which it was made and the name, quality and domicile of the person making it and bear his signature.

§ 2.—*Acts of birth*

111. The accoucheur shall draw up an attestation of birth.

The attestation shall state the place, date and time of birth, the sex of the child, and the name and domicile of the mother.

112. The accoucheur shall transmit a copy of the attestation to those who are required to declare the birth; he shall without delay transmit another copy of the attestation to the registrar of civil status, together with the declaration of birth of the child, unless it cannot be transmitted immediately.

113. The declaration of birth of a child shall be made by the father and mother, or by either of them, to the registrar of civil status within thirty days, before a witness, who shall sign it.

114. Only the father or mother may declare the filiation of a child with regard to themselves. However, where the child is conceived or born during the marriage, one of the parents may declare the filiation of the child with regard to the other.

No other person may declare the filiation with regard to one of the parents, except with the authorization of that parent.

115. The declaration of birth shall state the name assigned to the child, the sex and the place, date and time of birth of the child, the name and domicile of the father, of the mother, and of the witness, and the degree of consanguinity between the declarant and the child.

The person who makes the declaration shall attach to it a copy of the attestation of birth.

116. Every person who gives shelter to or takes custody of a newborn child whose father and mother are unknown or prevented from acting shall declare the birth to the registrar of civil status within thirty days.

The declaration shall state the sex and, if known, the name and the place, date and time of birth of the child.

117. In cases where the person who makes the declaration gives shelter to or takes custody of the child, he shall attach a note to it

relating the facts and circumstances and indicating, if known to him, the names of the father and mother.

118. Where the place, date and time of birth are unknown, the registrar of civil status shall fix them on the basis of a medical report and the presumptions that may be drawn from the circumstances.

§ 3.—*Acts of marriage*

119. A person who solemnizes a marriage shall declare it to the registrar of civil status within thirty days of the solemnization.

120. The declaration of marriage shall state the name and domicile of each spouse, their places and dates of birth, the date of their marriage, and the name of the father and mother of each of them and of the witnesses.

The declaration shall also state the name, domicile and quality of the officiant and indicate, where applicable, his religious affiliation.

121. The declaration of marriage shall indicate, where such is the case, the fact of an exemption from publication and, if one of the spouses is a minor, the authorizations or consents obtained.

122. The declaration shall be signed by the officiant, the spouses and the witnesses.

§ 4.—*Acts of death*

123. A physician who establishes that a death has occurred shall draw up an attestation of death.

He shall transmit a copy of the attestation to the person who is required to declare the death; he shall without delay transmit another copy of the attestation to the registrar of civil status, together with the declaration of death, unless it cannot be transmitted immediately.

124. If it is impossible to have a death attested by a physician within a reasonable time, the attestation may be drawn up by a coroner or two peace officers, who are then bound by the same obligations as the physician.

125. The attestation shall state the name and sex of the deceased and the place, date and time of death.

126. The declaration of death shall be made without delay to the registrar of civil status by the spouse of the deceased, a close

relative or a person related by marriage or, failing them, by any other person able to identify the deceased. The declaration shall be made before a witness, who shall sign it.

127. The declaration of death shall state the name and sex, place and date of birth and marriage, place of last domicile, place, date and time of death and place, date and mode of disposal of the body of the deceased, and the names of the father and mother and, where applicable, of the spouse of the deceased.

The person who makes the declaration shall attach to it a copy of the attestation of death.

128. Where the date and time of death are unknown, the registrar of civil status shall fix them on the basis of the report of a coroner and the presumptions that may be drawn from the circumstances.

If the place of death is unknown, it is presumed to be the place where the body was discovered.

129. If the deceased cannot be identified, the attestation shall include a description of the body and an account of the circumstances surrounding its discovery.

SECTION IV

ALTERATION OF THE REGISTER OF CIVIL STATUS

§ 1.—*General provision*

130. The clerk of the court that has rendered a judgment changing the name of a person, otherwise affecting the status of a person or changing any particular in an act of civil status shall give notice of the judgment to the registrar of civil status as soon as it acquires status as *res judicata.*

The registrar of civil status shall then make the required entries to ensure the publicity of the register.

§ 2.—*Preparation of acts and notations*

131. Where a birth, marriage or death having occurred in Québec is not attested or declared or is inaccurately attested or declared, the registrar of civil status shall make a summary investigation and, except in matters concerning filiation, draw up the act of civil status on the basis of the information he obtains.

132. Where the declaration and the attestation contain particulars that are contradictory yet essential to the establishment of the status of a person, no act of civil status may be drawn up except with the authorization of the court, on the application of the registrar of civil status or of an interested person.

133. A new act of civil status shall be drawn up, on the application of an interested person, where a judgment changing an essential particular in an act of civil status, such as the name or filiation of a person, is notified to the registrar of civil status or where the decision to authorize a change of name or of designation of sex has become final.

To complete the act, the registrar may require the new declaration he draws up to be signed by those who could have signed it if it had been the original declaration.

The new act is substituted for the original act; it shall repeat all the statements and particulars that are not affected by the alterations. In addition, the substitution must be noted in the original act.

134. Where a declaratory judgment of death is notified to him, the registrar of civil status shall draw up the act of death, indicating the particulars in accordance with the judgment.

135. The registrar of civil status shall make a notation of the act of marriage in the act of birth; he shall also make a notation of the act of death in the act of birth and the act of marriage.

136. The registrar of civil status, upon notification of a judgment granting a divorce, shall make a notation in the acts of birth and marriage of each of the persons concerned.

Upon notification of a judgment in nullity of marriage or annulling a declaratory judgment of death, the registrar shall cancel the act of marriage or of death, as the case may be, as well as the notations made of that act in the acts of birth and marriage of each of the persons concerned.

137. Where the registrar of civil status makes a notation in an act as a result of a judgment, he shall enter, in the act, the object and date of the judgment, the court that rendered it and the number of the court record.

In any other case, he shall make the necessary notations in the act to allow retrieval of the altering act.

138. The registrar of civil status, upon receiving an act of civil status made outside Québec but relating to a person domiciled in Québec, shall place the act in the register as though it were an act drawn up in Québec.

He shall also place the juridical acts made outside Québec which alter or replace acts of civil status in his possession; he shall then make the required entries to ensure the publicity of the register.

139. If an act of civil status drawn up outside Québec has been lost or destroyed or if no copy of it can be obtained, the registrar of civil status shall not draw up an act of civil status or make a notation in an act already in his possession except with the authorization of the court.

140. Where there is any doubt as to the validity of an act of civil status or a juridical act made outside Québec, the registrar of civil status shall not act until the validity of the document is recognized by a court in Québec.

141. Every act of civil status or juridical act made outside Québec and drawn up in a language other than French or English shall be accompanied by a translation authenticated in Québec.

§ 3.—*Rectification and reconstitution of an act and of the register*

142. Except in the cases provided for in this chapter, only the court may order the rectification of an act of civil status or its placement in the register.

The court may also, on the application of an interested person, review any decision of the registrar of civil status relating to an act of civil status.

143. The registrar of civil status shall correct the clerical errors in all acts.

144. On the basis of the information he obtains, the registrar of civil status shall reconstitute, in accordance with the Code of Civil Procedure, any act which has been lost or destroyed.

SECTION V

PUBLICITY OF THE REGISTER OF CIVIL STATUS

145. The register of civil status is published by the issue of copies of acts, certificates or attestations bearing the *vidimus* of the registrar of civil status and the date of issue.

Copies of acts of civil status, certificates and attestations issued under this section are authentic.

146. The copy of an act of civil status shall be a reproduction of the act, including any notations made therein.

147. A certificate of civil status shall set forth the name of the person, his sex, his place and date of birth, and, where applicable, the name of his spouse and the place and date of his undissolved marriage or death.

The registrar of civil status may also issue certificates of birth, marriage or death bearing only the particulars relating to one certified fact.

148. An attestation shall deal with the presence or absence in the register of an act or of a notation required by law to be made in the act.

149. The registrar of civil status shall issue a copy of an act only to the persons mentioned in the act or to persons who establish their interest; he shall issue certificates to all persons who apply for them.

The registrar shall issue an attestation to all persons who apply therefor if the particular or fact it attests to is of the kind which appears on certificates; otherwise, he shall issue it only to persons who establish their interest.

150. Where a new act has been drawn up, only the persons mentioned in the new act may obtain a copy of the original act. However, in cases of adoption, no copy of the original act is ever issued unless, the other conditions of law having been fulfilled, it is authorized by the court.

Once an act has been annulled, only persons who establish their interest may obtain a copy of the annulled act.

151. The register of civil status may be consulted only with the authorization of the registrar of civil status.

Where the registrar allows the register to be consulted, he shall determine the conditions required for the safeguard of the information it contains.

SECTION VI

REGULATORY POWERS RELATING TO KEEPING AND PUBLICITY OF REGISTER OF CIVIL STATUS

152. The rules relating to the keeping of the register of civil status, the persons to whom the registrar of civil status may delegate his power to sign documents or to ensure public access to the register, and the manner in which it is to be done shall be determined by order of the Minister of Justice.

The additional particulars that may appear on attestations, the duties payable for the issue of copies of acts, certificates or attestations and the charge for preparing an act or consulting the register shall be fixed by regulation of the Government.

The orders and regulations shall be published in the *Gazette officielle du Québec.*

153. In Cree, Inuit or Naskapi communities, the local registry officer or another public servant appointed under any Act respecting Cree, Inuit and Naskapi native persons may be authorized, to the extent provided by regulation, to perform certain duties of the registrar of civil status.

TITLE FOUR

CAPACITY OF PERSONS

CHAPTER I

MAJORITY AND MINORITY

SECTION I

MAJORITY

154. Full age or the age of majority is eighteen years.

On attaining full age, a person ceases to be a minor and has the full exercise of all his civil rights.

155. In no case may the capacity of a person of full age be limited except by express provision of law or by a judgment ordering the institution of protective supervision.

SECTION II

MINORITY

156. A minor exercises his civil rights only to the extent provided by law.

157. A minor fourteen years of age or over is deemed to be of full age for all acts pertaining to his employment or to the practice of his craft or profession.

158. A minor may, within the limits of his age and power of discernment, enter into contracts alone to meet his ordinary and usual needs.

159. Except where he may act alone, a minor is represented by his tutor for the exercise of his civil rights.

Unless the law or the nature of the act does not allow it, an act that may be performed by a minor alone may also be validly performed by his representative.

160. In judicial matters, a minor shall be represented by his tutor; his actions are brought in the name of his tutor.

However, a minor may, with the authorization of the court, institute alone an action relating to his status, to the exercise of parental authority or to an act that he may perform alone; he may in such cases act alone as defendant.

161. A minor may invoke, alone, in his defence, any irregularity arising from lack of representation or incapacity resulting from his minority.

162. An act performed alone by a minor where the law does not allow him to act alone or through a representative is absolutely null.

163. An act performed by the tutor without the authorization of the court although the nature of the act requires it may be annulled on the application of the minor, without any requirement to prove damage.

164. An act performed alone by a minor or his tutor without the authorization of the tutorship council although the nature of the act requires it cannot be annulled or the obligations arising from it reduced, on the application of the minor, unless he suffers damage therefrom.

165. A minor cannot bring an action in nullity or reduction of his obligations if the damage he suffers is caused by a fortuitous and unforeseen event.

A minor cannot avoid an extracontractual obligation to redress damage caused to another person by his fault.

166. The mere declaration by a minor that he is of full age does not deprive him of his action in nullity or reduction of his obligations.

167. On attaining full age, a person may confirm an act he performed alone during minority for which he required to be represented. After accounts of tutorship are rendered, he may also confirm an act performed by his tutor without observance of all the formalities.

SECTION III

EMANCIPATION

§ 1.—*Simple emancipation*

168. The tutor may, after obtaining the agreement of the tutorship council, emancipate a minor if he is sixteen years of age or over and requests it, by filing a declaration to that effect with the Public Curator.

Emancipation is effective from the filing of the declaration.

169. The court may likewise, after obtaining the advice of the tutor and, where applicable, of the tutorship council, emancipate a minor.

A minor may apply alone for his emancipation.

170. The tutor is accountable for his administration to the emancipated minor; he shall, however, continue to assist him gratuitously.

171. Emancipation does not put an end to minority nor does it confer all the rights resulting from majority, but it releases the minor

from the obligation to be represented for the exercise of his civil rights.

172. An emancipated minor may establish his own domicile, and he ceases to be under the authority of his father and mother.

173. In addition to the acts that a minor may perform alone, an emancipated minor may perform all acts of simple administration; thus, he may, as a lessee, sign leases for terms not exceeding three years and make gifts of his property according to his means, provided he does not notably break into his capital.

174. An emancipated minor shall be assisted by his tutor for every act beyond simple administration, and in particular for accepting a gift encumbered with a charge or for renouncing a succession.

An act performed without assistance cannot be annulled or the obligations arising from it reduced unless the minor suffers damage therefrom.

175. Loans or borrowings of large amounts, considering the patrimony of an emancipated minor, and acts of alienation of an immovable or enterprise require the authorization of the court, on the advice of the tutor. Otherwise, the act cannot be annulled or the obligations arising from it reduced, on the application of the minor, unless he suffers damage therefrom.

§ 2.—*Full emancipation*

176. Full emancipation enables a minor to exercise his civil rights as if he were of full age.

177. Full emancipation is obtained by marriage.

It may also, on the application of the minor, be granted by the court for a serious reason; in that case, the person having parental authority, the tutor and any person having custody of the minor and, where applicable, the tutorship council shall be summoned to give their opinion.

CHAPTER II

TUTORSHIP TO MINORS

SECTION I

TUTORSHIP

178. Tutorship is established in the interest of the minor; it is intended to ensure the protection of his person, the administration of his patrimony and, generally, to secure the exercise of his civil rights.

179. Tutorship to minors is legal or dative.

Tutorship resulting from the law is legal; tutorship conferred by the father and mother or by the court is dative.

180. Tutorship is a personal office accessible to every natural person capable of fully exercising his civil rights who is suited for the office.

181. No person may be compelled to accept the office of dative tutorship except, failing any other person, the director of youth protection or, for tutorship to property, the Public Curator.

182. Tutorship does not pass to the heirs of the tutor; they are simply responsible for his administration. If they are of full age, they are bound to continue his administration until a new tutor is appointed.

183. Tutorship exercised by the director of youth protection or the Public Curator is attached to the office.

184. Fathers and mothers, the director of youth protection or the person recommended by him as tutor exercise tutorship gratuitously.

However, a father and mother may receive such remuneration as may be fixed by the court, on the advice of the tutorship council, for the administration of the property of their child where that is one of their principal occupations.

185. A dative tutor may receive such remuneration as may be fixed by the court on the advice of the tutorship council or by the father or mother by whom he is appointed, or by the liquidator of their succession if so authorized. The expenses of the tutorship and the revenue from the property to be administered are taken into account.

186. Except where divided, tutorship extends to the person and property of the minor.

187. Where tutorship extends to the person of the minor and is exercised by a person other than the father or mother, the tutor shall act as the person having parental authority, unless the court decides otherwise.

188. In no case may more than one tutor to the person be appointed, but several tutors to property may be appointed.

189. The tutor to property is responsible for the administration of the property of the minor, but the tutor to the person represents the minor in judicial proceedings regarding that property.

Where several tutors to property are appointed, each of them is accountable for the management of the property entrusted to him.

190. A legal person may act as tutor to property, if so authorized by law.

191. Whenever a minor has any interest to discuss judicially with his tutor, a tutor *ad hoc* is appointed to him.

192. Tutorship is based at the domicile of the minor.

If a tutorship is exercised by the director of youth protection or by the Public Curator, the tutorship is based at the place where that person holds office.

SECTION II

LEGAL TUTORSHIP

193. In addition to having the rights and duties connected with parental authority, the father and mother, if of full age or emancipated, are, of right, tutors to their minor child for the purposes of representing him in the exercise of his civil rights and administering his patrimony.

The father and mother are also tutors to their child conceived but yet unborn and are responsible for acting on his behalf in all cases where his interests require it.

194. The father and mother exercise tutorship together unless one parent is deceased or unable to express his wishes or to do so in due time.

195. Either parent may give the other the mandate to represent him in the performance of acts pertaining to the exercise of tutorship.

The mandate is presumed with regard to third persons in good faith.

196. Where the custody of a child is decided by judgment, the tutorship continues to be exercised by the father and mother, unless the court, for grave reasons, decides otherwise.

197. In case of disagreement relating to the exercise of the tutorship between the father and mother, either of them may refer the dispute to the court.

The court shall decide in the interest of the minor after fostering the conciliation of the parties and, if need be, obtaining the opinion of the tutorship council, where applicable.

198. Deprivation of parental authority entails loss of tutorship; withdrawal of certain attributes of parental authority or of the exercise of such attributes entails loss of tutorship only if so decided by the court.

199. A father or mother deprived of tutorship as a result of having been deprived of parental authority or having had the exercise of certain attributes of parental authority withdrawn may, even after dative tutorship is instituted, be reinstated as tutor once his or her parental authority or the full exercise thereof is restored.

200. Where the court declares the father and mother of a minor deprived of parental authority without appointing another tutor, the director of youth protection having jurisdiction in the child's place of residence becomes *ex officio* legal tutor to the child unless the child is already provided with a tutor other than his father and mother.

The director of youth protection is also, until the order of placement, legal tutor to a child he has caused to be declared eligible for adoption or in whose respect he has received a general consent to adoption, except where the court has appointed another tutor.

SECTION III

DATIVE TUTORSHIP

201. A father or mother may appoint a tutor to his or her minor child by will or by filing a declaration to that effect with the Public Curator.

202. The right to appoint a tutor belongs exclusively to the last surviving parent if he has retained legal tutorship to the day of his death.

Where both parents die simultaneously, each having designated a different person as tutor, and both persons accept the office, the court shall decide which person shall hold it.

203. Unless the designation is contested, the tutor appointed by the father or mother assumes office upon accepting it, after the death of the last surviving parent.

If the person does not refuse the office within thirty days after being informed of his appointment, he is presumed to have accepted.

204. Whether the tutor appointed by the father or mother accepts or refuses the office, he shall notify the liquidator of the succession and the Public Curator.

205. Where the person appointed by either parent refuses tutorship, he shall without delay notify his refusal to the substitute, if any, designated by the parent.

The person may, however, retract his refusal before the substitute accepts the office or an application to institute tutorship is made to the court.

206. Tutorship is conferred by the court where it is expedient to appoint a tutor or a substitute, to appoint a tutor *ad hoc* or a tutor to property or where the designation of a tutor appointed by the father and mother is contested.

Tutorship is conferred on the advice of the tutorship council, unless it is applied for by the director of youth protection.

207. The minor, the father or mother and close relatives and relatives by marriage of the minor or any other interested person, including the Public Curator, may apply to the court and, if necessary, propose a suitable person who is willing to accept the tutorship.

208. The director of youth protection or the person recommended as tutor by him may also apply for the institution of tutorship to an orphan who is a minor and who has no tutor, or to a child whose father and mother both fail, in fact, to assume his care, maintenance or education, or to a child who in all likelihood would be in danger if he returned to his father and mother.

SECTION IV

ADMINISTRATION OF TUTORS

209. In respect of the property of the minor, the tutor acts as an administrator entrusted with simple administration.

210. Fathers and mothers are not required in the administration of the property of their minor child to make an inventory of the property, to furnish a security as a guarantee of their administration, to render an annual account of management or to obtain any advice or authorization from the tutorship council or the court unless the property is worth more than $25 000 or it is ordered by the court on the application of an interested person.

211. All property given or bequeathed to a minor on condition that it be administered by a third person is withdrawn from the administration of the tutor.

If the deed does not indicate the particular mode of administration of the property, the person administering it has the rights and obligations of a tutor to property.

212. A tutor may accept alone any gift in favour of his pupil. He cannot accept any gift involving an obligation, however, without obtaining the authorization of the tutorship council.

213. A tutor cannot transact or prosecute an appeal without the authorization of the tutorship council.

214. The tutor, before contracting a large loan in relation to the patrimony of the minor, offering property as security, alienating an important piece of family property, an immovable or an enterprise, or demanding the definitive partition of immovables held by the minor in undivided ownership, shall obtain the authorization of the court, which shall seek the advice of the tutorship council.

The court shall not allow the loan to be contracted, or property to be alienated by onerous title or offered as security, except where that is necessary to ensure the education and maintenance of the minor, to pay his debts or to maintain the property in good working order or safeguard its value. The authorization shall then indicate the amount and terms and conditions of the loan, the property that may be alienated or offered as security, and set forth the conditions under which it may be done.

215. No tutor may, before obtaining an expert's appraisal, alienate property worth more than $25 000, except in the case of securities quoted and traded on a recognized stock exchange according to the provisions respecting presumed sound investments. A copy of the appraisal shall be attached to the annual management account.

Juridical acts which are related according to their nature, their object or the time they are performed constitute one and the same act.

216. A tutor acting alone may enter into an agreement to continue in indivision, but in that case the minor, once of full age, may terminate the agreement within one year, regardless of its term.

Any agreement authorized by the tutorship council and by the court is binding on the minor once of full age.

217. The clerk of the court shall without delay give notice to the tutorship council and to the Public Curator of any judgment relating to the interests of the patrimony of a minor and of any transaction effected pursuant to an action to which the tutor is a party in that quality.

218. The liquidator of a succession all or part of which devolves or is bequeathed to a minor, the donor of a property worth more than $25 000 if the donee is a minor, and any person who pays an indemnity for the benefit of a minor shall declare that fact to the Public Curator and state the value of the property.

219. A tutor shall set aside from the property under his administration all sums necessary to pay the expenses of the tutorship, in particular, to provide for the exercise of the civil rights of the minor and the administration of his patrimony. He shall also do so where, to ensure the minor's maintenance and education, it is necessary to make up for the support owed by the father and mother.

220. The tutor to the person shall agree with the tutor to property as to the amounts he requires each year to pay the expenses of the tutorship.

If the tutors do not agree on the amounts or the payment thereof, the tutorship council or, failing that, the court shall decide.

221. The minor manages the proceeds of his work and any allowances paid to him to meet his ordinary and usual needs.

Where the revenues of the minor are considerable or where justified by the circumstances, the court, after obtaining the advice of the tutor and, where applicable, the tutorship council, may fix the amounts that remain under the management of the minor. It shall take into account the age and power of discernment of the minor, the general conditions of his maintenance and education and his obligations of support and those of his parents.

222. A director of youth protection exercising a tutorship or the person he recommends to exercise it shall obtain the authorization of the court where the law requires the tutor to obtain the advice or authorization of the tutorship council before acting.

Where the property is worth more than $25 000, however, or, at all events, where the court so orders, tutorship to property is conferred on the Public Curator, who has from that time the rights and obligations of a dative tutor, subject to the provisions of the law.

SECTION V

TUTORSHIP COUNCIL

§ 1.—*Role and establishment of the council*

223. The role of the tutorship council is to supervise the tutorship. The tutorship council is composed of three persons designated by a meeting of relatives, persons connected by marriage or friends or, if the court so decides, of only one person.

224. A tutorship council is established both in the case of dative tutorship and in that of legal tutorship, although, in the latter case, only where the father and mother are required, in respect of the administration of the property of the minor, to make an inventory, to furnish security or to render an annual account of management.

No council is established where the tutorship is exercised by the director of youth protection, a person he has recommended, or the Public Curator.

225. Any interested person may initiate the establishment of a tutorship council by applying for the holding of a meeting of relatives, persons connected by marriage and friends either before the court of the place where the minor has his domicile or residence, or before a notary.

The court having cognizance of an application for the appointment or replacement of a tutor or tutorship council may do likewise, even of its own initiative.

226. The tutor appointed by the father or mother of a minor or the father and mother, as the case may be, shall initiate the establishment of the tutorship council.

The father and mother may, at their option, convene a meeting of relatives, persons connected by marriage or friends or make an application to the court for the establishment of a tutorship council composed of only one person designated by the court.

227. The father and mother of the minor as well as his other ascendants and his brothers and sisters of full age shall be called to the meeting of relatives, persons connected by marriage or friends called to establish a tutorship council.

The other relatives, persons connected by marriage and friends of the minor may be called to the meeting provided they are of full age.

Not fewer than five persons shall attend the meeting and, as far as possible, the maternal and paternal lines shall be represented.

228. Persons who must be called are always entitled to present themselves at the first meeting and give their opinion even if they were not called.

229. The meeting shall appoint the three members of the council and two substitutes, giving consideration so far as possible to representation of the maternal and paternal lines.

It shall also appoint a secretary, who may or may not be a member of the council, responsible for taking and keeping the minutes of the deliberations; it shall fix the secretary's remuneration, where applicable.

The tutor cannot be a member of the tutorship council.

230. Vacancies are filled by the council by selecting a designated substitute in the line where the vacancy occurred. If there is no substitute, the council shall select a relative or a person connected by marriage in the same line or, if none, a relative or a person connected by marriage in the other line or a friend.

231. The tutorship council shall invite the tutor to each of its meetings to hear his opinion; the minor may be invited.

232. The court may, on application or of its own motion, rule that the tutorship council will be composed of only one person designated by it where, owing to the dispersal, indifference or major impediment of the family members or to the personal or family situation of the minor, it would be advisable to establish a council composed of three persons.

The court may in such a case designate a person who shows a special interest in the minor or, failing that, the director of youth protection or the Public Curator, if he is not already the tutor.

233. Excepting the director of youth protection and the Public Curator, no person may be compelled to accept membership in the council; a person who has agreed to become a member may be released at any time provided it is not done at an inopportune time.

Membership of a tutorship council is a personal charge that entails no remuneration.

§ 2.—*Rights and obligations of the council*

234. The tutorship council shall give advice and make decisions in every case provided for by law.

Moreover, where the rules of administration of the property of others provide that the beneficiary shall or may give his consent to an act, obtain advice or be consulted, the council shall act on behalf of the minor who is the beneficiary.

235. The council, where composed of three persons, shall meet at least once a year; deliberations are not valid unless a majority of its members attend the meeting or unless all the members can express themselves by a means which allows all of them to communicate directly with each other.

The decisions and advice of the council are taken or given by majority vote; the reasons of each member shall be expressed.

236. Whenever a minor has any interest to discuss judicially with his tutor, the council must cause a tutor *ad hoc* to be appointed to him.

237. The council shall satisfy itself that the tutor makes an inventory of the property of the minor and that he furnishes and maintains a security.

The council receives the annual management account from the tutor and is entitled to examine all documents and vouchers attached to the account and obtain a copy of them.

238. Any interested person may, for a grave reason, apply to the court within ten days to have a decision of the council reviewed or for authorization to initiate the establishment of a new council.

239. The tutor may demand the convening of the council or, if it cannot be convened, apply to the court for authorization to act alone.

240. The council is responsible for seeing that the records of the tutorship are preserved and for transmitting them to the minor or his heirs at the end of the tutorship.

SECTION VI

SUPERVISION OF TUTORSHIPS

§ 1.—*Inventory*

241. Within sixty days of the institution of the tutorship, the tutor shall make an inventory of the property to be administered. He must do the same in respect of property devolved to the minor after the tutorship is instituted.

A copy of the inventory shall be transmitted to the Public Curator and to the tutorship council.

242. A tutor who continues the administration of another tutor after the rendering of account is exempt from making an inventory.

§ 2.—*Security*

243. The tutor is bound, if the value of the property to be administered exceeds $25 000, to take out liability insurance or furnish other security to guarantee the performance of his obligations. The kind and object of the security and the time granted to furnish it are determined by the tutorship council.

The tutorship is responsible for the costs of the security.

244. The tutor shall without delay furnish proof of the security to the tutorship council and to the Public Curator.

The tutor shall maintain the security or another of sufficient value for the duration of his office and furnish proof of it every year.

245. A legal person exercising tutorship to property is exempt from furnishing security.

246. Where it is advisable to withdraw the obligation to furnish security, the tutorship council or the minor, once he attains full age, may do so and, at the cost of the tutorship, apply for cancellation of the entry, if any. Notice thereof shall be given to the Public Curator.

§ 3.—*Reports and accounts*

247. The tutor shall send the annual account of his management to the minor fourteen years of age or over, to the tutorship council and to the Public Curator.

The tutor to property shall render an annual account to the tutor to the person.

248. At the end of his administration, the tutor shall give a final account to the minor become of full age; he shall also give an account to the tutor who replaces him and to the minor fourteen years of age or over or, where applicable, to the liquidator of the succession of the minor. He shall send a copy of his final account to the tutorship council and to the Public Curator.

249. Every agreement between the tutor and the minor become of full age relating to the administration or the account is null unless it is preceded by a detailed rendering of account and the delivery of the related vouchers.

250. The Public Curator shall examine the annual accounts of management and the final account of the tutor. He shall also satisfy himself that the security is maintained.

He may require any document and any explanation concerning the accounts and, where provided for by law, require that they be examined.

SECTION VII

REPLACEMENT OF TUTOR AND END OF TUTORSHIP

251. A dative tutor may, for a serious reason, apply to the court to be relieved of his duties, provided his application is not made at an inopportune time and notice of it has been sent to the tutorship council.

252. The tutorship council or, in case of emergency, one of its members shall apply for the replacement of a tutor who is unable to perform his duties or neglects his obligations. A tutor to the person shall act in the same manner with regard to a tutor to property.

Any interested person, including the Public Curator, may also, for the reasons set forth in the first paragraph, apply for the replacement of the tutor.

253. Where tutorship is exercised by the director of youth protection, by a person he recommends or by the Public Curator, any interested person may apply for his replacement without having to justify it for any reason other than the interest of the minor.

254. During the proceedings, the tutor shall continue to exercise his duties unless the court decides otherwise and appoints a provisional administrator responsible for the simple administration of the property of the minor.

255. A judgment terminating the duties of a tutor must contain the reasons for replacing him and designate the new tutor.

256. Tutorship ends when the minor attains full age, obtains full emancipation or dies.

The office of a tutor ceases at the end of the tutorship, when he is replaced or on his death.

CHAPTER III

PROTECTIVE SUPERVISION OF PERSONS OF FULL AGE

SECTION I

GENERAL PROVISIONS

257. Protective supervision of a person of full age is established in his interest and is intended to ensure the protection of his person,

the administration of his patrimony and, generally, the exercise of his civil rights.

Any incapacity resulting from protective supervision is established solely in favour of the person under protection.

258. Every decision relating to the institution of protective supervision or concerning a protected person of full age must be in his interest, respect his rights and safeguard his autonomy.

The person of full age shall, so far as possible and without delay, be informed of the decision.

259. A tutor or curator shall be appointed to represent, or an adviser to assist, a person of full age who is unable to care for himself or to administer his property by reason, in particular, of illness, deficiency or debility due to age which impairs his mental faculties or his physical ability to express his will.

A tutor or an adviser may also be appointed to a prodigal who endangers the well-being of his spouse or minor children.

260. In selecting the form of protective supervision, consideration is given to the degree of the person's inability to care for himself or administer his property.

261. The curator or the tutor to a protected person of full age is responsible for his custody and maintenance; he is also responsible for ensuring the moral and physical well-being of the protected person, taking into account his condition, needs and faculties and the other aspects of his situation.

He may delegate the exercise of the custody and maintenance of the protected person of full age but, so far as possible, he and the delegated person shall maintain a personal relationship with the protected person, obtain his advice where necessary, and keep him informed of the decisions made in his regard.

262. The Public Curator shall not exercise curatorship or tutorship to a protected person of full age unless he is appointed by the court to do so; he may also act of his own initiative if the person of full age is no longer provided with a curator or tutor.

263. The Public Curator has the simple administration of the property of a protected person of full age even when acting as curator.

264. The Public Curator does not have custody of the protected person of full age to whom he is appointed tutor or curator unless, where no other person can assume it, the court entrusts it to him.

He remains nevertheless responsible for protection of the person of full age where the latter is entrusted to the custody of another person. The other person, however, shall exercise the power of a tutor or curator to give consent to the care required by the state of health of the person of full age, except the care which the Public Curator elects to provide.

265. The Public Curator acting as tutor or curator to a protected person of full age may delegate the exercise of certain functions related to tutorship or curatorship to a person he designates after ascertaining, where the person of full age is being treated in a health or social services establishment, that the designated person is not employed by the establishment and has no duties therewith. He may, however, where circumstances warrant, disregard this restriction if the employee of the establishment is the spouse or a close relative of the person of full age.

He may authorize the delegate to consent to the care required by the state of health of the person of full age, except care which the Public Curator elects to provide.

266. At least once a year, the delegate shall render account of the exercise of the custody to the Public Curator. The Public Curator may revoke the delegation if there is a conflict of interest between the delegate and the person of full age or for any other serious reason.

267. The rules pertaining to tutorship to minors apply, adapted as required, to tutorship and curatorship to persons of full age.

Thus, the spouse and descendants of the person of full age, if any, must be called to the tutorship council in addition to the persons to be called to it pursuant to article 227.

SECTION II

INSTITUTION OF PROTECTIVE SUPERVISION

268. The institution of protective supervision is awarded by the court.

The court is not bound by the application and may decide on a form of protective supervision other than the form contemplated in the application.

269. The person of full age himself, his spouse, his close relatives and relatives by marriage, any person showing a special interest in the person or any other interested person, including the mandatary designated by the person of full age or the Public Curator, may apply for the institution of protective supervision.

270. Where a person of full age receiving care or services from a health or social services establishment requires to be assisted or represented in the exercise of his civil rights by reason of his isolation, the predictable duration of his inability, the nature or state of his affairs or because no mandatary designated by him gives him adequate assistance or representation, the director general of the health or social services establishment shall report that fact to the Public Curator, transmit a copy of his report to the person of full age and inform a close relative of that person.

The report must contain, in particular, the medical and psychosocial assessment prepared by the person who examined the person of full age; it shall deal with the nature and degree of the inability of the person of full age, the extent of his needs and the other circumstances of his situation and with the advisability of instituting protective supervision for him. It shall also set out the names, if known, of the persons qualified to apply for the institution of protective supervision.

271. The institution of protective supervision of a person of full age may be applied for in the year preceding his attaining full age.

The judgment takes effect on the day the person attains full age.

272. During proceedings, the court may, even of its own initiative, decide on the custody of the person of full age if it is clear that he is unable to care for himself and that custody is required to save him from serious damage.

273. An act under which the person of full age has entrusted another person with the administration of his property continues to produce its effects notwithstanding the proceedings unless it is revoked by the court for a serious reason.

If no mandate has been given by the person of full age or by the court under article 443, the rules provided in respect of the management of the business of another are observed and the Public Curator and any other person who is qualified to apply for the institution of protective supervision may, in an emergency or even before proceedings if an application for the institution of protective

supervision is about to be made, perform the acts required to preserve the patrimony.

274. In cases where there is no mandate or management of the business of another or even before proceedings if an application for the institution of protective supervision is about to be made, the court may, if it is necessary to act in order to prevent serious damage, provisionally designate the Public Curator or another person either to perform a specific act or to administer the property of the person of full age within the limits of simple administration of the property of others.

275. During proceedings and thereafter, if the form of protective supervision is a tutorship, the dwelling of the protected person of full age and the furniture in it shall be kept at his disposal. The power to administer that property allows only for conventions of precarious enjoyment, which cease to have effect by operation of law upon the return of the protected person of full age.

Should it be necessary or in the best interest of the protected person of full age that his furniture or his rights in respect of a dwelling be disposed of, the act shall be authorized by the tutorship council. Even in such a case, except for a compelling reason, souvenirs and other personal effects shall not be disposed of and shall, so far as possible, be kept at the disposal of the person of full age by the health or social services establishment.

276. Where the court takes cognizance of an application to institute protective supervision, it shall take into consideration, in addition to the advice of the persons who may be called to form the tutorship council, the medical and psychosocial evidence, the wishes expressed by the person of full age in a mandate given for the eventuality of his inability which was not homologated, and the degree of autonomy of the person in whose respect the institution of protective supervision is applied for.

The court shall give to the person of full age an opportunity to be heard, personally or through a representative where required by his state of health, on the merits of the application and, where applicable, on the form of protective supervision and as to the person who will represent or assist him.

277. A judgment concerning protective supervision may be reviewed at any time.

278. Unless the court fixes an earlier date, the protective supervision shall be reviewed after three years in the case of a

tutorship or the appointment of an adviser or after five years in the case of a curatorship.

The curator, tutor or adviser to the person of full age is bound to see to it that the person of full age is submitted to a medical and psychosocial assessment in due time. Where the person making the assessment ascertains that the situation of the person of full age has so changed as to justify the termination or modification of protective supervision, he shall make a report to the person of full age and to the person having applied for the assessment and file a copy of the report in the office of the court, and the court shall then review the judgment.

279. The director general of the health or social services establishment providing care or services to the person of full age shall, if the inability that justified protective supervision ceases, attest that fact in a report which he shall file in the office of the court. The report shall include the medical and psychosocial assessment.

The clerk shall notify the persons qualified to intervene in the application for the institution of protective supervision that the report has been filed. If no objection is made within thirty days, protective supervision is terminated without other formality. An attestation of the termination shall be drawn up by the clerk and transmitted without delay to the person of full age himself and to the Public Curator.

SECTION III

CURATORSHIP TO PERSONS OF FULL AGE

280. The court shall institute curatorship to a person of full age if it is established that the inability of that person to care for himself or to administer his property is total and permanent and that he requires to be represented in the exercise of his civil rights.

The court shall then appoint a curator.

281. The curator has the full administration of the property of the protected person of full age, except that he is bound, as the administrator entrusted with simple administration of the property of others, to make only investments that are presumed to be sound. The only rules which apply to his administration are the rules of administration of the property of others.

282. Every act performed alone by a person of full age under curatorship may be declared null or the obligations resulting from it reduced, without any requirement to prove damage.

283. Acts performed before the curatorship may be annulled or the obligations resulting from them reduced on the mere proof that the inability was notorious or known to the other party at the time the acts were performed.

SECTION IV

TUTORSHIP TO PERSONS OF FULL AGE

284. The court shall institute tutorship to a person of full age if it is established that the inability of that person to care for himself or to administer his property is partial or temporary and that he requires to be represented in the exercise of his civil rights.

The court shall then appoint a tutor to the person and to property, or a tutor either to the person or to property.

285. The tutor has the simple administration of the property of the person of full age unable to administer his property. He exercises his administration in the same manner as the tutor to a minor, unless the court decides otherwise.

286. The rules pertaining to the exercise of the civil rights of a minor apply, adapted as required, to a person of full age under tutorship.

287. The court may, on the institution of the tutorship or subsequently, determine the degree of capacity of the person of full age under tutorship, taking into consideration the medical and psychosocial assessment and, as the case may be, the advice of the tutorship council or of the persons who may be called upon to form the tutorship council.

The court shall then indicate the acts which the person under tutorship may perform alone or with the assistance of the tutor, or which he cannot perform unless he is represented.

288. The person of full age under tutorship retains the administration of the proceeds of his work, unless the court decides otherwise.

289. Acts performed before the tutorship may be annulled or the obligations resulting from them reduced on the mere proof that

the inability was notorious or known to the other party at the time the acts were performed.

SECTION V

ADVISERSHIP TO PERSONS OF FULL AGE

290. The court shall appoint an adviser to a person of full age who, although generally and habitually able to care for himself and administer his property, requires, for certain acts or for a certain time, to be assisted or advised in the administration of his property.

291. The adviser does not have the administration of the property of the protected person of full age. He shall, however, intervene in the acts for which he is bound to give his assistance.

292. The court, on the institution of the advisership or subsequently, shall indicate the acts for which the adviser's assistance is required, and those for which it is not required.

If the court gives no indication, the protected person of full age shall be assisted by his adviser for every act beyond the capacity of a minor who has been granted simple emancipation.

293. Acts performed alone by a person of full age for which the intervention of his adviser was required may be cancelled or the obligations resulting from them reduced only if the person of full age suffers damage therefrom.

SECTION VI

END OF PROTECTIVE SUPERVISION

294. Protective supervision ceases by a judgment of release or by the death of the protected person of full age.

Protective supervision also ceases upon the expiry of the prescribed period for contesting the report attesting the cessation of the inability.

295. A protected person of full age may at any time after the removal of protective supervision and, where applicable, after the rendering of account by the tutor or curator, confirm any act otherwise null.

296. A vacancy in the office of curator, tutor or adviser does not terminate protective supervision.

The tutorship council shall, on the occurrence of a vacancy, initiate the appointment of a new curator or tutor; any interested person may also initiate such an appointment, as well as that of a new adviser.

TITLE FIVE

LEGAL PERSONS

CHAPTER I

JURIDICAL PERSONALITY

SECTION I

CONSTITUTION AND KINDS OF LEGAL PERSONS

297. Legal persons are endowed with juridical personality.

Legal persons are established in the public interest or for a private interest.

298. Legal persons are constituted in accordance with the juridical forms provided by law, and sometimes directly by law.

Legal persons exist from the coming into force of the Act or from the time prescribed therein if they are established in the public interest or if they are constituted directly by law or through the effect of law; otherwise, they exist from the time provided for in the Acts that are applicable to them.

299. Legal persons established in the public interest are primarily governed by the special Acts by which they are constituted and by those which are applicable to them; legal persons established for a private interest are primarily governed by the Acts applicable to their particular type.

Both kinds of legal persons are also governed by this Code where the provisions of such Acts require to be complemented, particularly with regard to their status as legal persons, their property or their relations with other persons.

SECTION II

EFFECTS OF JURIDICAL PERSONALITY

300. Legal persons have full enjoyment of civil rights.

301. Every legal person has a patrimony which may, to the extent provided by law, be divided or appropriated to a purpose. It also has extra-patrimonial rights and obligations flowing from its nature.

302. Legal persons have capacity to exercise all their rights, and the provisions of this Code respecting the exercise of civil rights by natural persons are applicable to them, adapted as required.

They have no incapacities other than those which may result from their nature or from an express provision of law.

303. Legal persons cannot exercise tutorship or curatorship to the person.

They may, however, to the extent that they are authorized by law to act as such, hold office as tutor or curator to property, liquidator of a succession, sequestrator, trustee or administrator of another legal person.

304. Every legal person has a name which is assigned to it when it is constituted, and under which it exercises its rights and performs its obligations.

The name shall conform to law and include, where required by law, an expression that clearly indicates the juridical form assumed by the legal person.

305. A legal person may engage in an activity or identify itself under a name other than its own name. It shall file a notice to that effect with the Inspector General of Financial Institutions or, if the legal person is a syndicate of co-owners, in the registry office for the division where the immovable under co-ownership is situated.

306. The domicile of a legal person is at the place and address of its seat.

307. A legal person may change its name or its domicile by following the procedure established by law.

308. Legal persons are distinct from their members. Their acts bind none but themselves, except as provided by law.

309. The functioning, the administration of the patrimony and the activities of a legal person are regulated by law and by its articles,

which comprise the constituting document and the by-laws; to the extent permitted by law, they may also be regulated by a unanimous agreement of the members.

In case of inconsistency between the constituting document and the by-laws, the constituting document prevails.

310. Legal persons act through their organs, such as the board of directors and the general meeting of the members.

311. A legal person is represented by its senior officers, who obligate it to the extent of the powers vested in them by law or its articles.

312. The articles of a legal person shall set out the contractual relations existing between the legal person and its members.

313. A legal person exists in perpetuity unless otherwise provided by law or its constituting document.

314. The members of a legal person are liable toward the legal person for anything they have promised to contribute to it, unless otherwise provided by law.

315. In case of fraud with regard to the legal person, the court may, on the application of an interested person, hold the founders, directors, other senior officers or members of the legal person who have participated in the alleged act or derived personal profit therefrom liable, to the extent it indicates, for any damage suffered by the legal person.

316. In no case may a legal person set up juridical personality against a person in good faith if it is set up to dissemble, among other things, fraud, abuse of right or contravention of a rule of public order.

317. The court, in deciding an action by a third person in good faith, may rule that a person or group not having status as a legal person has the same obligations as a legal person if the person or group acted as such in respect of the third person.

318. A legal person may ratify an act performed for it before it was constituted; it is then substituted for the person who acted for it.

The ratification does not effect novation; the person who acted has thenceforth the same rights and is subject to the same obligations as a mandatary in respect of the legal person.

319. A person who acts for a legal person before it is constituted is bound by the obligations so contracted, unless the contract stipulates otherwise and includes a statement to the effect that the legal person might not be constituted or might not assume the obligations subscribed in the contract.

SECTION III

OBLIGATIONS AND DISQUALIFICATION OF DIRECTORS

320. A director is considered to be the mandatary of the legal person. He shall, in the performance of his duties, conform to the obligations imposed on him by law or by its articles and he shall act within the limits of the powers conferred on him.

321. A director shall act with prudence and diligence.

He shall also act with honesty and loyalty in the best interest of the legal person.

322. No director may mingle the property of the legal person with his own property nor may he use for his own profit or that of a third person any property of the legal person or any information he obtains by reason of his duties, unless he is authorized to do so by the members of the legal person.

323. A director shall avoid placing himself in any situation where his personal interest would be in conflict with his obligations as a director.

A director shall notify the legal person of any interest he has in an enterprise or association that may place him in a situation of conflict of interest and of any right he may set up against it, indicating their nature and value, where applicable. The notification shall be recorded in the minutes of the proceedings of the board of directors or the equivalent.

324. A director may, even in carrying on his duties, acquire, directly or indirectly, rights in the property under his administration or enter into contracts with the legal person.

The director shall immediately inform the legal person of any acquisition or contract described in the first paragraph, indicating the nature and value of the rights he is acquiring, and request that the fact be recorded in the minutes of proceedings of the board of directors or the equivalent. He shall abstain, except if required, from the discussion and voting on the question. This rule does not, however,

apply to matters concerning the remuneration or conditions of employment of the director.

325. Where the director of a legal person fails to give information correctly and immediately of an acquisition or a contract, the court, on the application of the legal person or a member, may, among other measures, annul the act or order the director to render account and to remit the profit or benefit realized to the legal person.

The action must be brought within one year after knowledge is gained of the acquisition or contract.

326. Minors, persons of full age under tutorship or curatorship, bankrupts and persons prohibited by the court from holding such office are disqualified for office as directors.

However, minors and persons of full age under tutorship may be directors of associations whose objects concern them.

327. The acts of a director or senior officer cannot be annulled on the sole ground that he was disqualified or that his designation was irregular.

328. The court, on the application of an interested person, may prohibit a person from holding office as a director of a legal person if the person has been found guilty of an indictable offence involving fraud or dishonesty in a matter related to legal persons, or who has repeatedly violated the Acts relating to legal persons or failed to fulfil his obligations as a director.

329. No prohibition may extend beyond five years from the latest act charged.

The court may lift the prohibition under the conditions it sees fit, on the application of the person concerned by the prohibition.

SECTION IV

JUDICIAL CONFERMENT OF PERSONALITY

330. Juridical personality may be conferred retroactively by the court on a legal person which, before being constituted, had publicly, continuously and unequivocally all the appearances of a legal person and acted as such in respect of both its members and third persons.

The authority that should originally have controlled the constitution of the person shall give prior consent to the application.

331. Any interested person may intervene in the proceedings or bring an action against a judgment which, in fraud of his rights, has granted juridical personality.

332. The judgment confers juridical personality from the date it indicates.

A copy of the judgment shall be transmitted without delay by the clerk of the court to the authority which accepted or issued the constituting document of the legal person. Notice of the judgment shall be published by the authority in the *Gazette officielle du Québec*.

CHAPTER II

PROVISIONS APPLICABLE TO CERTAIN LEGAL PERSONS

333. Legal persons assuming a juridical form governed by another title of this Code are subject to the rules of this chapter; the same applies to any other legal person if the Act by which it is constituted or which applies to it so provides or indicates no other rules of functioning, dissolution or liquidation.

They may, however, make derogations in their articles from the rules concerning their functioning, provided the rights of the members are safeguarded.

SECTION I

FUNCTIONAL STRUCTURE OF LEGAL PERSONS

§ 1.—*Administration*

334. The board of directors shall manage the affairs of the legal person and exercise all the powers necessary for that purpose; it may create management positions and other organs, and delegate the exercise of certain powers to the holders of those positions and to those organs.

The board of directors shall adopt and implement management by-laws, subject to approval by the members at the next general meeting.

335. The decisions of the board of directors are taken by the vote of a majority of the directors.

336. Every director is presumed to have approved the decisions taken by the board of directors.

Every director is, jointly with the other directors, liable for the decisions unless he requested that his dissent be recorded in the minutes of proceedings or the equivalent. He may, nevertheless, if he had a serious reason for not letting his dissent be known in due time, be relieved of this liability.

337. The directors of a legal person are designated by the members.

No person may be designated as a director without his express consent.

338. The term of office of directors is one year; at the expiry of that period, their term continues unless it is revoked.

339. Directors shall fill the vacancies on the board. Vacancies on the board do not prevent the directors from acting; if their number has become less than a quorum, the remaining directors may validly convene the members.

340. Where the directors are prevented from acting in a majority or in the specified proportion owing to an impediment or to systematic opposition by some of them, the others may act alone for conservatory acts; they may also, with the authorization of the court, act alone for acts requiring immediate action.

Where the situation persists and the administration is seriously impaired as a result, the court, on the application of an interested person, may exempt the directors from acting in the specified proportion, divide their duties, grant a casting vote to one of them or make any order it sees fit in the circumstances.

341. The board of directors shall keep the list of members and the books and registers necessary for the proper functioning of the legal person.

The documents referred to in the first paragraph are the property of the legal person and the members shall have access to them.

342. The board of directors may designate a person to keep the books and registers of the legal person.

The designated person may issue copies of the documents deposited with him; until proof to the contrary, the copies are proof

of their contents without any requirement to prove the signature affixed to them or the authority of the author.

343. If all the directors are in agreement, they may participate in a meeting of the board of directors by the use of a means which allows all those participating to communicate directly with each other.

§ 2.—*General meeting*

344. The general meeting shall be convened each year by the board of directors, or following its directives, within six months after the close of the financial period.

The first general meeting shall be held within six months from the constitution of the legal person.

345. The notice convening the annual general meeting shall indicate the date, time and place of the meeting and the agenda; it shall be sent to each member qualified to attend, not less than ten but not more than forty-five days before the meeting.

Ordinary business need not be mentioned in the agenda of the annual meeting.

346. The notice convening the annual meeting shall be accompanied with the balance sheet, the statement of the results for the preceding financial period and a statement of debts and claims.

347. No business may be discussed at a general meeting except that appearing on the agenda, unless all the members entitled to be convened are present and consent. However, at an annual meeting, each member may raise any question of interest to the legal person or its members.

348. The proceedings of the general meeting are invalid unless a majority of the members qualified to vote are present or represented.

349. A member may be represented at a general meeting if he has given a written mandate to that effect.

350. Decisions of the meeting are taken by a majority of the votes given.

The vote of the members is taken by a show of hands or, if demanded, by secret ballot.

351. If they represent ten per cent of the votes, members may requisition the directors or the secretary to convene an annual or special general meeting, stating in a written requisition the business to be transacted at the meeting.

If the directors or the secretary fail to act within twenty-one days after receiving the requisition, any of the members who signed it may convene the meeting.

The legal person is bound to reimburse to the members the expenses reasonably incurred by them to hold the meeting, unless the meeting decides otherwise.

§ 3.—*Provisions common to meetings of directors and general meetings*

352. The directors or the members may waive the notice convening a meeting of the board of directors, a general meeting or a meeting of any other organ.

The mere presence of the directors or the members is equivalent to a waiver of the convening notice unless they are attending to object that the meeting was not regularly convened.

353. Resolutions in writing signed by all the persons qualified to vote at a meeting are as valid as if passed at a meeting of the board of directors, at a general meeting or at a meeting of any other organ.

A copy of the resolutions shall be kept with the minutes of proceedings or the equivalent.

SECTION II

DISSOLUTION AND LIQUIDATION OF LEGAL PERSONS

354. A legal person is dissolved by cancellation of its constituting document or for any other cause provided for by the constituting document or by law.

It is also dissolved where the court confirms the fulfilment of the condition attached to the constituting document, the accomplishment of the object for which the legal person was constituted, or the impossibility of accomplishing that object, or the existence of some other legitimate cause.

355. A legal person may also be dissolved by consent of two-thirds of the votes given at a general meeting convened expressly for that purpose.

The notice convening the meeting shall be sent not less than thirty days but not more than forty-five days before the meeting and not at an inopportune time.

356. The juridical personality of the legal person continues to exist for the purposes of the liquidation.

357. The directors shall file a notice of the dissolution with the Inspector General of Financial Institutions or, if the legal person is a syndicate of co-owners, in the registry office for the division where the immovable under co-ownership is situated, and appoint a liquidator, according to the articles, who shall proceed immediately with the liquidation.

If the directors fail to fulfil these obligations, they may be held liable for the acts of the legal person, and any interested person may apply to the court for the appointment of a liquidator.

358. Notice of the appointment of a liquidator, as also of any revocation, shall be filed in the same place as the notice of dissolution. The appointment and revocation may be set up against third persons from the filing of the notice.

359. The liquidator is seized of the property of the legal person and acts as an administrator of the property of others entrusted with full administration.

The liquidator is entitled to require from the directors and the members of the legal person any document and any explanation concerning the rights and obligations of the legal person.

360. The liquidator shall first repay the debts, then effect the reimbursement of the capital.

The liquidator shall then, subject to the provisions of the following paragraph, partition the assets among the members in proportion to their rights or, otherwise, in equal portions, following if need be the rules relating to the partition of property in undivided ownership. Any residue devolves to the State.

If the assets include property coming from contributions of third persons, the liquidator shall remit such property to an association or trust sharing objectives similar to those of the legal person; if that is not possible, it devolves to the State or, if of little value, is shared equally among the members.

361. The liquidator shall keep the books and records of the legal person for five years from the closing of the liquidation; he shall keep them for a longer period if the books and records are required as evidence in proceedings.

He shall dispose of them thereafter as he sees fit.

362. Unless the liquidator obtains an extension from the court, the Public Curator shall undertake or continue a liquidation that is not terminated within five years from the filing of the notice of dissolution.

The Public Curator has, in that case, the same rights and obligations as a liquidator.

363. The liquidation of a legal person is closed by the filing of a notice of closure in the same place as the notice of dissolution. The filing of the notice, where such is the case, cancels any other entries concerning the legal person.

BOOK TWO

THE FAMILY

TITLE ONE

MARRIAGE

CHAPTER I

MARRIAGE AND SOLEMNIZATION OF MARRIAGE

364. Marriage must be contracted openly, in the presence of two witnesses, before a competent officiant.

Marriage can be contracted only between a man and a woman expressing openly their free and enlightened consent.

365. Every clerk or deputy clerk of the Superior Court designated by the Minister of Justice is competent to solemnize marriage.

In addition, every minister of religion authorized to solemnize marriage by the religious society to which he belongs is competent to do so, provided that he is resident in Québec, that he carries on the whole or part of his ministry in Québec, that the existence, rites

and ceremonies of his confession are of a permanent nature and that he is authorized by the Minister.

Any minister of religion not resident but living temporarily in Québec may also be authorized to solemnize marriage in Québec for such time as the Minister may determine.

366. No minister of religion may be compelled to solemnize a marriage to which there is any impediment according to his religion and to the discipline of the religious society to which he belongs.

367. Before the solemnization of a marriage, publication must be effected by means of a notice posted up, for twenty days before the date fixed for the marriage, at the place where the marriage is to be solemnized.

At the time of the publication or of the application for a dispensation, the spouses must be informed of the advisability of a premarital medical examination.

368. The publication sets forth the name and domicile of each of the intended spouses, and the date and place of birth of each. The correctness of these particulars is confirmed by a witness of full age.

369. The officiant may, for a serious reason, grant a dispensation from publication.

370. If a marriage is not solemnized within three months from the twentieth day after publication, the publication must be renewed.

371. Any interested person may oppose the solemnization of a marriage between persons incapable of contracting it.

A minor may oppose a marriage alone. He may also act alone as defendant.

372. Before proceeding with a marriage, the officiant shall assure himself as to the identity, age and marital status of the intended spouses.

The officiant cannot solemnize the marriage unless:

(1) The intended spouses are at least sixteen years of age and, in the case of minors, the officiant has ascertained that the person having parental authority or, as the case may be, the tutor consents to the solemnization of the marriage;

(2) All the formalities have been completed and the dispensations, if any, have been granted;

(3) The intended spouses are free from any previous marriage bond;

(4) Neither spouse is, in relation to the other, an ascendant, a descendant, a brother or a sister.

373. In the presence of the witnesses, the officiant shall read articles 391 to 395 to the intended spouses.

He shall request and receive, from the intended spouses individually and personally, a declaration of their wish to take each other as husband and wife. He shall then declare them united in marriage.

374. The officiant shall draw up the declaration of marriage and send it, within thirty days of the solemnization, to the registrar of civil status.

375. The clerk or his deputy shall solemnize the marriage according to the rules prescribed by order of the Minister of Justice and, on behalf of the Minister of Finance, collect any duty fixed by order from the intended spouses.

376. The registrar of civil status shall be informed of every grant or revocation of authorization by the Minister of Justice to solemnize marriage so that he may make the proper entries in the register of civil status.

In the case of the death of a minister of religion authorized by the Minister of Justice to solemnize marriage, the religious society to which he belonged shall inform the registrar of civil status so that he may strike off the authorization.

CHAPTER II

PROOF OF MARRIAGE

377. Marriage is proved by an act of marriage, except in cases where the law authorizes another mode of proof.

378. Possession of the status of spouses compensates for a defect of form in the act of marriage.

CHAPTER III

NULLITY OF MARRIAGE

379. A marriage which is not solemnized according to the prescriptions of this Title may be declared null upon the application of any interested person, although the court may decide according to the circumstances.

No action is admissible after the lapse of three years from the solemnization.

380. The nullity of a marriage, for whatever reason, does not deprive the children of the advantages secured to them by law or by the marriage contract.

The rights and duties of fathers and mothers towards their children are unaffected by nullity.

381. A marriage, although declared null, produces effects with regard to the spouses if they were in good faith.

In particular, the liquidation of the patrimonial rights that are then presumed to have existed is proceeded with, unless the spouses each agree on taking back their property.

382. If the spouses were in bad faith, they each take back their property.

383. If only one spouse was in good faith, that spouse may either take back his or her property or apply for the liquidation of the patrimonial rights resulting to him or her from the marriage.

384. Subject to article 385, spouses in good faith are entitled to the gifts made to them in consideration of marriage.

However, the court may, when declaring a marriage null, declare the gifts lapsed or reduce them, or order the payment of the gifts *inter vivos* deferred for the period of time fixed by it, taking the circumstances of the parties into account.

385. The nullity of the marriage renders null the gifts *inter vivos* made in consideration of the marriage to a spouse in bad faith.

It also renders null the gifts *mortis causa* made by one spouse to the other in consideration of the marriage.

386. A spouse is presumed to have contracted marriage in good faith unless, when declaring the marriage null, the court declares that spouse to be in bad faith.

387. The court shall decide, as in proceedings for separation from bed and board, as to the provisional measures pending suit, the custody, maintenance and education of the children and, in declaring nullity, it shall decide as to the right of a spouse in good faith to support or to a compensatory allowance.

388. Nullity of marriage extinguishes the right which the spouses had to claim support unless, on a motion, the court, in declaring nullity, orders one of them to pay support to the other or, being unable, owing to the circumstances, to decide the question equitably, reserves the right to claim support.

The right to claim support cannot be reserved for a period of over two years; it is extinguished by operation of law at the expiry of that period.

389. Where the court has awarded support or reserved the right to claim support, it may at any time after the marriage is annulled declare the right to support extinguished.

CHAPTER IV

EFFECTS OF MARRIAGE

390. In no case may spouses derogate from the provisions of this chapter, whatever their matrimonial regime.

SECTION I

RIGHTS AND DUTIES OF SPOUSES

391. The spouses have identical rights and obligations in marriage.

They owe each other respect, fidelity, succour and assistance.

They must live together.

392. In marriage, both spouses retain their respective names, and exercise their respective civil rights under those names.

393. The spouses together shall take in hand the moral and material direction of the family, exercise parental authority and assume the tasks resulting therefrom.

394. The spouses shall choose the family residence together.

In the absence of an express choice, the family residence is presumed to be the residence where the members of the family live while carrying on their principal activities.

395. The spouses shall contribute towards the expenses of the marriage in proportion to their respective means.

The spouses may make their respective contributions by their activities within the home.

396. A spouse who enters into a contract for the current needs of the family also commits the other spouse for the whole, if they are not separated from bed and board.

However, the non-contracting spouse is not responsible for the debt if he or she had previously informed the other contracting party of his or her unwillingness to be committed.

397. Either spouse may give the other a mandate in order to be represented in acts relating to the moral and material direction of the family.

This mandate is presumed if one spouse is unable to express his or her will for any reason or if he or she is unable to do so in due time.

398. Either spouse may be authorized by the court to enter alone into any act for which the consent of the other would be required, provided such consent is unobtainable for any reason, or its refusal is not justified by the interest of the family.

The authorization is special and for a definite time; it may be amended or revoked.

399. If the spouses disagree as to the exercise of their rights and the performance of their duties, they or either of them may apply to the court, which will decide in the interest of the family after fostering the conciliation of the parties.

SECTION II

FAMILY RESIDENCE

400. Neither spouse may, without the consent of the other, alienate, hypothecate or remove from the family residence the movable property serving for the use of the household.

The movable property serving for the use of the household includes only the movable property destined to furnish or decorate the family residence, including pictures and other works of art, but does not include collections.

401. A spouse having neither consented to nor ratified an act concerning any movable property serving for the use of the household may apply to have it annulled.

However, an act by onerous title cannot be annulled if the other contracting party was in good faith.

402. Neither spouse, if the lessee of the family residence, may, without the written consent of the other, sublet it, transfer the right or terminate the lease where the lessor has been notified, by either of them, that the dwelling is used as the family residence.

A spouse having neither consented to nor ratified the act may apply to have it annulled.

403. Neither spouse, if the owner of an immovable with fewer than five dwellings that is used in whole or in part as the family residence, may, without the consent of the other, alienate the immovable, charge it with a real right or lease that part of it reserved for the use of the family.

A spouse having neither consented to nor ratified the act may apply to have it annulled if a declaration of family residence was previously entered against the immovable.

404. Neither spouse, if the owner of an immovable with five dwellings or more that is used in whole or in part as the family residence may, without the consent of the other, alienate the immovable or lease that part of it reserved for the use of the family.

Where a declaration of family residence was previously registered against the immovable, a spouse not having consented to the deed of alienation may require to be granted a lease by the acquirer of the premises already occupied as a dwelling under the conditions

governing the lease of a dwelling; on the same condition, a spouse having neither consented to nor ratified the act of lease may apply to have it annulled.

405. The usufructuary, the emphyteutic lessee and the user are subject to the rules of articles 403 and 404.

Neither spouse may, without the consent of the other, dispose of rights held by another title conferring use of the family residence.

406. The declaration of family residence is made by both spouses or by either of them.

It may also result from a declaration to that effect contained in an act intended for publication.

407. A spouse not having given consent to an act for which it was required may, without prejudice to any other right, claim damages from the other spouse or from any other person having, through his fault, caused damage.

408. In the event of separation from bed and board, divorce or nullity of a marriage, the court may, upon the application of either spouse, award to the spouse of the lessee the lease of the family residence.

The award binds the lessor upon being served on him and relieves the original lessee of the rights and obligations arising out of the lease from that time forward.

409. In the event of separation from bed and board, or the dissolution or nullity of a marriage, the court may award, to either spouse or to the surviving spouse, the ownership or use of the movable property of the other which serves for the use of the household.

It may also award the right of use of the family residence to the spouse to whom it awards custody of a child.

The court may exempt the user from furnishing security and from making an inventory of the property.

410. The award of the right of use or ownership is effected, failing agreement between the parties, on the conditions determined by the court and, in particular, on condition of payment of any balance, immediately or by instalments.

When the balance is payable by instalments, the court shall fix the terms and conditions of guarantee and payment.

411. Judicial award of a right of ownership is subject to the provisions relating to sale.

412. A judgment awarding a right of use or ownership is equivalent to title and has the effects thereof.

SECTION III

FAMILY PATRIMONY

§ 1.—*Establishment of patrimony*

413. Marriage entails the establishment of a family patrimony consisting of certain property of the spouses regardless of which of them holds a right of ownership in that property.

414. The family patrimony is composed of the following property owned by one or the other of the spouses: the residences of the family or the rights which confer use of them, the movable property with which they are furnished or decorated and which serves for the use of the household, the motor vehicles used for family travel and the benefits accrued during the marriage under a retirement plan.

This patrimony also includes the registered earnings, during the marriage, of each spouse pursuant to the Act respecting the Québec Pension Plan or to similar plans.

The earnings contemplated in the second paragraph and accrued benefits under a retirement plan governed or established by an Act which grants a right to death benefits to the surviving spouse where the marriage is dissolved as a result of death are, however, excluded from the family patrimony.

Property devolved to one of the spouses by succession or gift before or during the marriage is also excluded from the family patrimony.

For the purposes of the rules on family patrimony, a retirement plan is any of the following:

— a plan governed by the Act respecting Supplemental Pension Plans or that would be governed thereby if it applied to the place where the spouse works,

— a retirement plan governed by a similar Act of a legislative jurisdiction other than the Parliament of Québec,

— a plan established by an Act of the Parliament of Québec or of another legislative jurisdiction,

— a retirement-savings plan,

— any other retirement-savings instrument, including an annuity contract, into which sums from any of such plans have been transferred.

§ 2.—*Partition of patrimony*

415. In the event of separation from bed and board, or the dissolution or nullity of a marriage, the value of the family patrimony of the spouses, after deducting the debts contracted for the acquisition, improvement, maintenance or preservation of the property composing it, shall be equally divided between the spouses or between the surviving spouse and the heirs, as the case may be.

Where partition is effected upon separation from bed and board, no new partition shall be effected upon the subsequent dissolution or nullity of the marriage unless the spouses had voluntarily resumed living together; where a new partition is effected, the date when the spouses resumed living together is substituted for the date of the marriage for the purposes of this section.

416. The net value of the family patrimony is determined according to the value of the property composing the patrimony and the debts contracted for the acquisition, improvement, maintenance or preservation of the property composing it on the date of the death of the spouse or on the date of the institution of the action in which separation from bed and board, divorce or nullity of the marriage, as the case may be, is decided; the property is valued at its market value.

The court may, however, upon the application of one or the other of the spouses or of their successors, decide that the net value of the family patrimony will be established according to the value of such property and such debts on the date when the spouses ceased living together.

417. Once the net value of the family patrimony has been established, a deduction is made from it of the net value, at the time of the marriage, of the property then owned by one of the spouses that is included in the family patrimony; similarly, a deduction is made

from it of the net value of a contribution made by one of the spouses during the marriage for the acquisition or improvement of property included in the family patrimony, where the contribution was made out of property devolved by succession or gift, or its reinvestment.

A further deduction from the net value is made, in the first case, of the increase in value acquired by the property during the marriage, proportionately to the ratio existing at the time of the marriage between the net value and the gross value of the property, and, in the second case, of the increase in value acquired since the contribution, proportionately to the ratio existing at the time of the contribution between the value of the contribution and the gross value of the property.

Reinvestment during the marriage of property included in the family patrimony that was owned at the time of the marriage gives rise to the same deductions, adapted as required.

418. Partition of the family patrimony shall be effected by giving in payment or by payment in money.

If partition is effected by giving in payment, the spouses may agree to transfer other property than that composing the family patrimony.

419. The court may, at the time of partition, award certain property to one of the spouses and also, where it is necessary to avoid damage, order the debtor spouse to perform his or her obligation by way of instalments spread over a period of not over ten years.

It may also order any other measure it considers appropriate to ensure that the judgment is properly executed, and, in particular, order that security be granted to one of the parties to guarantee performance of the obligations of the debtor spouse.

420. Where property included in the family patrimony was alienated in the year preceding the death of one of the spouses or the institution of proceedings for separation from bed and board, divorce or annulment of marriage and was not replaced, the court may order that a compensatory payment be made to the spouse who would have benefited from the inclusion of that property in the family patrimony.

The same rule applies where the property was alienated or misappropriated over one year before the death of one of the spouses or the institution of proceedings and the alienation was made for the purpose of decreasing the share of the spouse who would have benefited from the inclusion of that property in the family patrimony.

421. The court may, on an application, make an exception to the rule of partition into equal shares, and decide that there shall be no partition of earnings registered pursuant to the Act respecting the Québec Pension Plan or to similar plans where it would result in an injustice considering, in particular, the brevity of the marriage, the waste of certain property by one of the spouses, or the bad faith of one of them.

422. The spouses cannot, by way of their marriage contract or otherwise, renounce their rights in the family patrimony.

One spouse may, however, from the death of the other spouse or from the judgment of divorce, separation from bed and board or nullity of marriage, renounce such rights, in whole or in part, by notarial deed *en minute*; that spouse may also renounce them by a judicial declaration recorded in writing in the course of proceedings for divorce, separation from bed and board or nullity of marriage.

Where the renunciation is made by notarial deed, it must be entered in the register of personal rights. Failing entry within a period of one year from the time when the right to partition arose, the renouncing spouse is deemed to have accepted.

423. Renunciation by one of the spouses, by notarial deed, of partition of the family patrimony may be annulled by reason of lesion or any other cause of nullity of contracts.

424. The partition of the earnings registered in the name of each spouse pursuant to the Act respecting the Québec Pension Plan or to a similar plan is effected by the body responsible for administering the plan, in accordance with that Act or the Act applicable to that plan, unless the latter Act provides no rules for partition.

425. The partition of the accrued benefits of one of the spouses under a pension plan governed or established by an Act is effected according to the rules of valuation and devolution contained in that Act, where that is the case.

In no case, however, may the partition of such benefits deprive the original holder of such benefits of over one-half of the total value of the benefits accrued to him before or during the marriage, or confer more benefits on the beneficiary of the right to partition than the original holder of these benefits has under his plan.

Between the spouses or for their benefit, and notwithstanding any provision to the contrary, such benefits and benefits accrued

under any other pension plan are transferable and seizable for partition of the family patrimony.

SECTION IV

COMPENSATORY ALLOWANCE

426. The court, in declaring separation from bed and board, divorce or nullity of marriage, may order either spouse to pay to the other, as compensation for the latter's contribution, in property or services, to the enrichment of the patrimony of the former, an allowance payable immediately or by instalments, taking into account, in particular, the advantages of the matrimonial regime and of the marriage contract. The same rule applies in case of death; in such a case, the advantages of the succession to the surviving spouse are also taken into account.

Where the right to the compensatory allowance is founded on the regular cooperation of the spouse in an enterprise, whether the enterprise deals in property or in services and whether or not it is a commercial enterprise, it may be applied for from the time the cooperation ends, if this results from the alienation, dissolution or voluntary or forced liquidation of the enterprise.

427. The cooperating spouse may adduce any evidence to prove his or her contribution to the enrichment of the patrimony of the other spouse.

428. Where a compensatory allowance becomes payable, the court, failing agreement between the parties, shall fix the amount thereof. It may also, where applicable, fix the terms and conditions of payment and order that the allowance be paid immediately or by instalments or that it be paid by the awarding of rights in certain property.

If the court awards a right in the family residence, a right in the movable property serving for the use of the household or retirement benefits accrued under a retirement plan to one of the spouses or to the surviving spouse, the provisions of Sections II and III are applicable.

429. One of the spouses may, during the marriage, agree with the other spouse to make partial payment of the compensatory allowance. The payment received must be deducted when the time comes to fix the value of the compensatory allowance.

CHAPTER V

MATRIMONIAL REGIMES

SECTION I

GENERAL PROVISIONS

§ 1.—*Choice of matrimonial regime*

430. Any kind of stipulation may be made in a marriage contract, subject to the imperative provisions of law and public order.

431. Spouses who, before the solemnization of their marriage, have not fixed their matrimonial regime in a marriage contract, are subject to the regime of partnership of acquests.

432. A matrimonial regime, whether legal or conventional, takes effect on the day when the marriage is solemnized.

A change made to the matrimonial regime during the marriage takes effect on the day of the act attesting the change.

In no case may the parties stipulate that their matrimonial regime or any change to it will take effect on another date.

433. A minor authorized to marry may, before the marriage is solemnized, make all such matrimonial agreements as the marriage contract admits of, provided he is authorized to that effect by the court.

The person having parental authority or, as the case may be, the tutor must be summoned to give his opinion.

The minor may apply for the authorization alone.

434. Agreements not authorized by the court may be impugned only by the minor or by the persons who had to be summoned to give their opinions; no such agreement may be impugned if one year has elapsed since the marriage was solemnized.

435. No person of full age under tutorship or provided with an adviser may make matrimonial agreements without the assistance of his tutor or adviser; the tutor must be authorized for this purpose by the court upon the advice of the tutorship council.

No agreement made in violation of this article may be impugned except by the person of full age himself, his tutor or his adviser, as

the case may be, nor except in the year immediately following the solemnization of the marriage or the day of the act changing the matrimonial agreements.

436. Intended spouses may change their matrimonial agreements before the solemnization of the marriage, in the presence and with the consent of all those who were parties to the marriage contract, provided the changes themselves are made by marriage contract.

437. During marriage, spouses may change their matrimonial regime and any stipulation in their marriage contract, provided the change itself is made by marriage contract.

Gifts made in marriage contracts, including gifts *mortis causa*, may be changed even if they are stipulated as irrevocable, provided that the consent of all interested persons is obtained or that they are of small value or are customary presents.

If a creditor sustains damage as the result of a change to a marriage contract, he may, within one year of becoming aware of the change, have it declared unenforceable in his regard.

438. Children to be born are represented by the spouses for the modification or cancellation, before or during the marriage, of gifts made to them by the marriage contract.

439. Marriage contracts must be established by a notarial deed *en minute*, on pain of absolute nullity.

440. The notary performing a marriage contract changing a previous contract must immediately notify the depositary of the original marriage contract and the depositary of any contract changing the matrimonial regime. The depositary must enter the change on the original and on any copy he may make of it, indicating the date of the contract, the name of the notary and the number of his minute.

441. A notice of every marriage contract must be entered in the register of personal rights at the requisition of the executing notary.

§ 2.—*Exercise of rights and powers arising out of matrimonial regime*

442. Either spouse may give a mandate to the other in order to be represented in the exercise of rights and powers granted by the matrimonial regime.

443. Where an expression of will cannot be given or cannot be given in due time by one spouse, the court may confer a mandate upon the other spouse to administer the property of that spouse or property administered by that spouse under the matrimonial regime.

The court shall fix the terms and conditions of exercise of the powers conferred.

444. The court may declare the judicial mandate withdrawn once it is established that it is no longer necessary.

The mandate ceases by operation of law upon the other spouse's being provided with a tutor or curator.

445. Either spouse, having administered the property of the other, shall account even for the fruits consumed before receiving formal notice to render an account.

446. If one spouse exceeds the powers granted by the matrimonial regime and the other has not ratified the act, the latter may apply to have it declared null.

As regards movable property, however, each spouse is deemed, in respect of third parties in good faith, to have power to enter alone into acts by onerous title for which the consent of the other spouse would be necessary.

SECTION II

PARTNERSHIP OF ACQUESTS

§ 1.—*Composition of partnership of acquests*

447. The property that the spouses possess individually when the regime comes into effect or that they subsequently acquire constitutes acquests or private property according to the rules that follow.

448. The acquests of each spouse include all property not declared to be private property by law, and, in particular,

(1) the proceeds of that spouse's work during the regime;

(2) the fruits and income due or collected from all that spouse's private property or acquests during the regime.

449. The private property of each spouse consists of

(1) property owned or possessed by that spouse when the regime comes into effect;

(2) property which devolves to that spouse during the regime by succession or gift, and the fruits and income derived from it if the testator or donor has so provided;

(3) property acquired by that spouse to replace private property and any insurance indemnity relating thereto;

(4) the rights or benefits devolved to that spouse as a subrogated holder or as a specified beneficiary under a contract or plan of retirement, other annuity or insurance of persons;

(5) that spouse's clothing and personal papers, wedding ring, decorations and diplomas;

(6) the instruments required for that spouse's occupation, saving compensation where applicable.

450. Property acquired with private property and acquests is also private property, subject to compensation, if the value of the private property used is greater than one-half of the total cost of acquisition of the property. Otherwise, it is an acquest subject to compensation.

The same rule applies to life insurance, retirement pensions and other annuities. The total cost is the aggregate of the premiums or sums paid, except in term insurance where it is the amount of the latest premium.

451. Where, during the regime, a spouse who is already privately an undivided co-owner of a property acquires another part of it, this acquired part is also that spouse's private property, saving compensation where applicable.

However, if the value of the acquests used to acquire that part is equal to or greater than one-half of the total value of the property of which the spouse has become the owner, this property becomes an acquest, subject to compensation.

452. The right of a spouse to support, to a disability allowance or to any other benefit of the same nature remains the private property of that spouse; however, all pecuniary benefits derived from these are acquests, if they fall due or are collected during the regime or are payable to that spouse's heirs and successors at death.

No compensation is due by reason of any amount or premium paid with the acquests or the private property to acquire the pensions or other benefits.

453. The right to claim damages and the compensation received for moral or corporal injury are also the private property of the spouse.

The same rule applies to the right and the compensation arising from an insurance contract or any other indemnification scheme, but no compensation is payable in respect of the premiums or amounts paid with the acquests.

454. Property acquired as an accessory of or an annex to private property, and any construction, work or plantation on or in an immovable which is private property, remain private, saving compensation, if need be.

However, if the accessory or annex was acquired, or the construction, work or plantation made, from acquests, and if its value is equal to or greater than that of the private property, the whole becomes an acquest subject to compensation.

455. Securities acquired by the effect of a declaration of dividends on securities that are the private property of either spouse remain that spouse's private property, saving compensation.

Securities acquired by the effect of the exercise of a subscription right, a pre-emptive right or any other similar right conferred on either spouse by securities that are that spouse's private property likewise remain so, saving compensation, if need be.

Redemption premiums and prepaid premiums on securities that are the private property of either spouse remain that spouse's private property without compensation.

456. Income derived from the operation of an enterprise that is the private property of either spouse remains that spouse's private property, subject to compensation, if it is reinvested in the enterprise.

No compensation is due, however, if the investment was necessary in order to maintain the income of the enterprise.

457. Intellectual and industrial property rights are private property, but all fruits and income arising from them and collected or fallen due during the regime are acquests.

458. All property is presumed to constitute an acquest, both between the spouses and with respect to third persons, unless it is established that it is private property.

459. Any property that a spouse is unable to prove to be an exclusively private property or acquest is presumed to be held by both spouses in undivided ownership, one-half by each.

§ 2.—*Administration of property and liability for debts*

460. Each spouse has the administration, enjoyment and free disposal of his or her private property and acquests.

461. Neither spouse may, however, without the consent of the other, dispose of acquests *inter vivos* by gratuitous title, with the exception of property of small value or customary presents.

A spouse may be authorized by the court to enter into the act alone, however, if consent cannot be obtained for any reason or if refusal is not justified in the interest of the family.

462. The restriction to the right to dispose of acquests does not limit the right of either spouse to designate a third person as a beneficiary or subrogated holder of an insurance of persons, a retirement pension or any other annuity, subject to the application of the rules respecting the family patrimony.

No compensation is due by reason of the sums or premiums paid with the acquests if the designation is in favour of the other spouse or of the children of either spouse.

463. The spouses, individually, are liable on both their private property and their acquests for all debts incurred by them before or during the marriage.

While the regime lasts, neither spouse is liable for the debts incurred by the other, subject to articles 396 and 397.

§ 3.—*Dissolution and liquidation of regime*

464. The regime of partnership of acquests is dissolved by

(1) the death of one of the spouses;

(2) a conventional change of regime during the marriage;

(3) a judgment of divorce, separation from bed and board, or separation as to property;

(4) the absence of one of the spouses in the cases provided for by law;

(5) the nullity of the marriage if, nevertheless, the marriage produces effects.

The effects of the dissolution are produced immediately, except in the cases of subparagraphs 3 and 5, where they are retroactive, between the spouses, to the day of the application.

465. In any case of dissolution of a regime, the court may, upon the application of either spouse or of the latter's successors, decide that, in the mutual relations of the spouses, the effects of the dissolution are retroactive to the date when they ceased to live together.

466. Each spouse retains his or her private property after the regime is dissolved.

One spouse may accept or renounce the partition of the other spouse's acquests, notwithstanding any agreement to the contrary.

467. Acceptance may be either express or tacit.

No spouse who has interfered in the management of the acquests of the other spouse after the regime is dissolved may receive the share of the acquests of the other spouse to which he or she is entitled unless the other spouse has accepted the partition of the acquests of the spouse who interfered.

Acts of simple administration do not constitute interference.

468. Renunciation must be made by notarial deed *en minute* or by judicial declaration recorded by the court.

Renunciation made by notarial deed must be entered in the register of personal rights; failing entry within six months from the date of the dissolution, the spouse is deemed to have accepted.

469. If either spouse renounces partition, the share of the other's acquests to which he or she would have been entitled remains vested in the other.

However, the creditors of the spouse who renounces partition to the prejudice of their rights may apply to the court for a declaration

that the renunciation cannot be set up against them, and accept the share of the acquests of their debtor's spouse in his or her place and stead.

In that case, their acceptance has effect only in their favour and only to the extent of the amount of their claims; it is not valid in favour of the renouncing spouse.

470. A spouse who has misappropriated or concealed acquests, wasted acquests or administered them in bad faith forfeits his or her share of the acquests of the other spouse.

471. Acceptance and renunciation are irrevocable. Renunciation may be annulled, however, by reason of lesion or any other cause of nullity of contracts.

472. When the regime is dissolved by death and the surviving spouse has accepted the partition of the acquests of the deceased spouse, the heirs of the deceased spouse may accept or renounce the partition of the surviving spouse's acquests, and, excepting preferential awards which only the surviving spouse is entitled to receive, the provisions on the dissolution and liquidation of the regime apply to them.

If one of the heirs accepts partition and the others renounce it, the heir who accepts cannot take more than the portion of the acquests that he would have had if all had accepted.

Renunciation by the surviving spouse may be set up against the creditors of the deceased spouse.

473. When a spouse dies while still entitled to renounce partition, the heirs have a further period of six months from the date of the death in which to have their renunciation entered.

474. When the partition of a spouse's acquests is accepted, the property of the patrimony of that spouse must first be divided into two masses, one comprising the private property and the other the acquests.

A statement shall then be prepared of the compensation owed by the mass of private property to the mass of the spouse's acquests, and *vice versa*.

The compensation shall be equal to the enrichment enjoyed by one mass to the detriment of the other.

475. Property susceptible of compensation is estimated according to its condition at the time of dissolution of the regime and to its value at the time of liquidation.

The enrichment is valued as on the day the regime is dissolved; however, when the property acquired or improved was alienated during the regime, the enrichment is valued as on the day of the alienation.

476. No compensation is due by reason of expenses necessary or useful for the maintenance or preservation of the property.

477. Unpaid debts incurred for the benefit of the private property give rise to compensation as if they had already been paid with the acquests.

478. Payment with the acquests of any fine imposed by law gives rise to compensation.

479. If the statement shows a balance in favour of the mass of acquests, the spouse who holds the patrimony shall make a return to that mass for partition, either by taking less, or in value, or with his or her private property.

If the statement shows a balance in favour of the mass of private property, the spouse shall remove assets from his or her acquests up to the amount owed.

480. Once the settlement of compensation has been effected, the net value of the mass of acquests shall be established and evenly divided between the spouses. The spouse who holds the patrimony may pay the portion due to the other spouse by paying him or her in money or by giving in payment.

481. If the dissolution of the regime results from the death or absence of the spouse who holds the patrimony, the other spouse may require to be given in payment, on condition of payment of any balance, immediately or by instalments, the family residence and the movable property serving for the use of the household or any other family property to the extent that they were acquests or property forming part of the family patrimony.

If there is no agreement on the payment of the balance, the court shall fix the terms and conditions of guarantee and payment.

482. If the parties do not agree on the valuation of the property, it shall be valued by experts designated by the parties or, failing them, the court.

483. Dissolution of the regime cannot prejudice the rights, before the partition, of former creditors against the whole of their debtor's patrimony.

After the partition, former creditors can only pursue payment of their claims against the debtor spouse. However, if the claims were not taken into account when the partition was made, they may, after discussion of the property of their debtor, pursue the other spouse. Each spouse then preserves a remedy against the other for the amounts he or she would have been entitled to if the claims had been paid before the partition.

In no case can the spouse of the debtor spouse be called upon to pay a greater amount than the portion of the acquests he or she received from the latter.

SECTION III

SEPARATION AS TO PROPERTY

§ 1.—*Conventional separation as to property*

484. The regime of conventional separation as to property is established by a simple declaration to this effect in the marriage contract.

485. Under the regime of separation as to property, the spouses, individually, have the administration, enjoyment and free disposal of all their property.

486. Property over which the spouses are unable to establish their exclusive right of ownership is presumed to be held by both in undivided ownership, one-half by each.

§ 2.—*Judicial separation as to property*

487. Either spouse may obtain separation as to property when the application of the rules of the matrimonial regime appears to be contrary to the interests of that spouse or of the family.

488. Separation as to property judicially obtained entails dissolution of the matrimonial regime and puts the spouses in the situation of those who are conventionally separate as to property.

Between spouses, the effects of the separation are retroactive to the day of the application unless the court makes them retroactive to the date on which the spouses ceased to live together.

489. Creditors of the spouses cannot apply for separation as to property, but may intervene in the action.

They may also institute proceedings against separation as to property pronounced or executed in fraud of their rights.

490. Dissolution of the matrimonial regime effected by separation as to property does not give rise to the rights of survivorship, unless otherwise stipulated in the marriage contract.

SECTION IV

COMMUNITY REGIMES

491. Where the spouses elect for a community matrimonial regime and it is necessary to supplement the provisions of the agreement, reference shall be made to the rules respecting partnership of acquests, adapted as required.

Spouses married under the former regime of legal community may invoke the rules of dissolution and liquidation of the regime of partnership of acquests where these are not inconsistent with their matrimonial regime.

CHAPTER VI

SEPARATION FROM BED AND BOARD

SECTION I

GROUNDS FOR SEPARATION FROM BED AND BOARD

492. Separation from bed and board is granted when the will to live together is seriously damaged.

493. The will to live together is seriously damaged

(1) where proof of an accumulation of facts that make further living together intolerable is adduced by the spouses or either of them;

(2) where, at the time of the application, the spouses have lived apart for at least one year;

(3) where either spouse has seriously failed to perform an obligation resulting from the marriage; however, the spouse cannot invoke his or her own failure.

494. If the spouses submit to the approval of the court a draft agreement settling the consequences of their separation from bed and board, they may apply for separation without disclosing the ground.

The court shall then grant the separation if it is satisfied that the spouses truly consent and that the agreement sufficiently preserves the interests of each of them and of the children.

SECTION II

PROCEEDINGS FOR SEPARATION FROM BED AND BOARD

§ 1.—*General provision*

495. It comes within the role of the court to counsel and to foster the conciliation of the spouses, and to see to the interests of the children and the respect of their rights, at all stages of the proceedings for separation from bed and board.

§ 2.—*Application and proof*

496. An application for separation from bed and board may be presented by both spouses or either of them.

497. Proof that further living together is hardly tolerable for the spouses may result from the admission of one party but the court may require additional evidence.

§ 3.—*Provisional measures*

498. An application for separation from bed and board releases the spouses from the obligation to live together.

499. The court may order either spouse to leave the family residence during the proceedings.

It may also authorize either spouse to retain temporarily certain movable property which until that time had served for common use.

500. The court may decide as to the custody and education of the children.

It shall fix the contribution payable by each spouse to the maintenance of the children during the proceedings.

501. The court may order either spouse to pay support to the other, and a provisional sum to cover the costs of the proceedings.

502. Provisional measures may be reviewed whenever warranted by any new fact.

§ 4.—*Adjournments and reconciliation*

503. The court may adjourn the hearing of the application for separation from bed and board if it considers that adjournment can foster the reconciliation of the spouses or avoid serious prejudice to either spouse or to any of their children.

The court may also adjourn the hearing if it considers that the spouses may settle the consequences of their separation from bed and board and that they may make agreements in that respect which the court may take into account.

504. Reconciliation between the spouses occurring after the application is presented terminates the proceedings.

Either spouse may nevertheless present a new application on any ground arising after the reconciliation and, in that case, may invoke the previous grounds in support of the application.

505. Resumption of cohabitation for less than ninety days does not by itself create a presumption of reconciliation.

SECTION III

EFFECTS BETWEEN SPOUSES OF SEPARATION FROM BED AND BOARD

506. Separation from bed and board releases the spouses from the obligation to live together; it does not break the bond of marriage.

507. Separation from bed and board carries with it separation as to property, where applicable.

Between spouses, the effects of separation as to property are produced from the day of the application for separation from bed and board, unless the court makes them retroactive to the date on which the spouses ceased to live together.

508. Separation from bed and board does not immediately give rise to rights of survivorship, unless otherwise stipulated in the marriage contract.

509. Separation from bed and board does not entail the lapse of gifts made to the spouses in consideration of marriage.

However, the court, when granting a separation, may declare the gifts lapsed or reduce them, or order the payment of gifts *inter vivos* deferred for such time as it may fix, taking the circumstances of the parties into account.

510. The court, when granting a separation from bed and board or subsequently, may order either spouse to pay support to the other.

511. In any decision relating to the effects of separation from bed and board in respect of the spouses, the court shall take their circumstances into account; it shall consider, among other things, their needs and means, the agreements made between them, their age and state of health, their family obligations, their chances of finding employment, their existing and foreseeable patrimonial situation, evaluating both their capital and their income, and, as the case may be, the time needed by the creditor of support to acquire sufficient autonomy.

SECTION IV

EFFECTS OF SEPARATION FROM BED AND BOARD ON CHILDREN

512. Separation from bed and board does not deprive the children of the advantages secured to them by law or by the marriage contract.

The rights and duties of fathers and mothers towards their children are unaffected by separation from bed and board.

513. The court, in granting separation from bed and board or subsequently, shall decide as to the custody, maintenance and education of the children, in their interest and in the respect of their rights, taking into account the agreements made between the spouses, where such is the case.

SECTION V

END OF SEPARATION FROM BED AND BOARD

514. Separation from bed and board is terminated upon the spouses' voluntarily resuming living together.

Separation as to property remains unless the spouses elect another matrimonial regime by marriage contract.

CHAPTER VII

DISSOLUTION OF MARRIAGE

SECTION I

GENERAL PROVISIONS

515. Marriage is dissolved by the death of either spouse or by divorce.

516. Divorce is granted in accordance with the Divorce Act of Canada. The rules governing proceedings for separation from bed and board enacted by this Code and the rules of the Code of Civil Procedure apply to such applications to the extent that they are consistent with the Divorce Act of Canada.

SECTION II

EFFECTS OF DIVORCE

517. Divorce carries with it the dissolution of the matrimonial regime.

The effects of the dissolution of the regime are produced between the spouses from the day the application is presented, unless the court makes them retroactive to the date on which the spouses ceased to live together.

518. Divorce entails the lapse of gifts *mortis causa* made by one spouse to the other in consideration of marriage.

519. Divorce does not entail the lapse of other gifts *inter vivos* made to spouses in consideration of marriage.

However, the court, when granting a divorce, may declare gifts under this article lapsed or reduce them, or order the payment of gifts *inter vivos* deferred for such time as it may fix.

520. Divorce has the same effects in respect of children as separation from bed and board.

TITLE TWO

FILIATION

CHAPTER I

FILIATION BY BLOOD

SECTION I

PROOF OF FILIATION

§ 1.—*Title and possession of status*

521. Paternal filiation and maternal filiation are proved by the act of birth, regardless of the circumstances of the child's birth.

In the absence of an act of birth, uninterrupted possession of status is sufficient.

522. Uninterrupted possession of status is established by an adequate combination of facts which indicate the relationship of filiation between the child and the persons from whom he is said to have issued.

§ 2.—*Presumption of paternity*

523. If a child is born during a marriage, or within three hundred days after the dissolution or annulment of the marriage, the husband of the child's mother is presumed to be the father.

The presumption of the husband's paternity is rebutted if the child is born more than three hundred days after the judgment ordering separation from bed and board, unless the spouses have voluntarily resumed living together before the birth.

If a child is born within three hundred days after the dissolution or annulment of a marriage but after his mother has remarried, her husband at the time of the birth is presumed to be the father of the child.

§ 3.—*Voluntary acknowledgement*

524. If maternity or paternity cannot be determined by applying the preceding articles, the filiation of a child may also be established by voluntary acknowledgement.

525. Maternity is acknowledged by a declaration made by a woman that she is the mother of the child.

Paternity is acknowledged by a declaration made by a man that he is the father of the child.

526. Mere acknowledgement of maternity or of paternity binds only the person who made it.

527. An established filiation which has not been successfully contested in court is not disprovable by a mere acknowledgement of maternity or of paternity.

SECTION II

ACTIONS RELATING TO FILIATION

528. No person may claim a filiation contrary to that assigned to him by his act of birth and the possession of status consistent with that act.

No person may contest the status of a person whose possession of status is consistent with his act of birth.

529. Any interested person, including the father or the mother, may, at any time and by any means, contest the filiation of a person whose possession of status is not consistent with his act of birth.

However, the presumed father may contest the filiation and disavow the child only within one year of the date on which the presumption of paternity takes effect, unless he is unaware of the birth, in which case the time limit begins to run on the day he becomes aware of it. The mother may contest the paternity of the presumed father within one year from the birth of the child.

530. A child whose filiation is not established by an act and by possession of status consistent therewith may claim his filiation before the court. Similarly, the father or the mother may claim paternity or maternity of a child whose filiation in their regard is not established by an act and by possession of status consistent therewith.

If the child already has another filiation established by an act of birth, by the possession of status, or by the effect of a presumption of paternity, an action to claim status cannot be brought unless joined to an action contesting the status thus established.

The action for disavowal or for contestation of status is directed against the child and against the mother or the presumed father, as the case may be.

531. Proof of filiation may be made by any mode of proof. However, testimony is not admissible unless there is a commencement of proof, or unless the presumptions or indications resulting from already clearly established facts are sufficiently strong to permit its admission.

532. Commencement of proof results from the title deeds of the family, domestic records and papers, and all other public or private writings proceeding from a party engaged in the contestation or who would have an interest therein if he were alive.

533. Every mode of proof is admissible to contest an action concerning filiation.

Any mode of proof tending to establish that the husband is not the father of the child is also admissible.

534. Except where subject to shorter legal prescription, actions concerning filiation are prescribed by thirty years from the day the child is deprived of the claimed status or begins to enjoy the contested status.

If a child has died without having claimed his status but while he was still within the time limit to do so, his heirs may take action within three years of his death.

535. The death of the presumed father or of the mother before the expiry of the period for disavowal or for contestation of status does not extinguish the right of action.

The heirs must exercise this right, however, within one year after the death.

SECTION III

EFFECTS OF FILIATION

536. All children whose filiation is established have the same rights and obligations, regardless of their circumstances of birth.

CHAPTER II

ADOPTION

SECTION I

CONDITIONS FOR ADOPTION

§ 1.—*General provisions*

537. No adoption may take place except in the interest of the child and on the conditions prescribed by law.

No adoption may take place for the purpose of confirming filiation already established by blood.

538. No minor child may be adopted unless his father and mother or his tutor have consented to the adoption or unless he has been judicially declared eligible for adoption.

539. No person of full age may be adopted except by the persons who stood *in loco parentis* towards him when he was a minor.

The court, however, may dispense with this requirement in the interest of the person to be adopted.

540. Any person of full age may, alone or jointly with another person, adopt a child.

541. An adopter must be at least eighteen years older than the person adopted, unless the person adopted is the child of the spouse of the adopter.

The court may, however, dispense with this requirement in the interest of the person to be adopted.

542. Consent provided for in this chapter must be in writing before two witnesses.

The same holds true of the withdrawal of consent.

§ 2.—*Consent of the adopted person*

543. No child ten years of age or over may be adopted without his consent, unless he is unable to express his will.

However, when a child under fourteen years of age refuses to give his consent, the court may defer its judgment for the period of time it indicates, or grant adoption notwithstanding his refusal.

544. Refusal by a child fourteen years of age or over is a bar to adoption.

§ 3.—*Consent of parents or tutor*

545. When adoption takes place with the consent of the parents, they must both consent to the adoption if the filiation of the child is established with regard to both of them.

If the filiation of the child is established with regard to only one parent, the consent of that parent is sufficient.

546. If either parent is deceased, or if he is unable to express his will, or if he is deprived of parental authority, the consent of the other parent is sufficient.

547. If both parents are deceased, if they are unable to express their will, or if they are deprived of parental authority, the adoption of the child is subject to the consent of the tutor, if the child has a tutor.

548. A parent of minor age may himself, without authorization, give his consent to the adoption of his child.

549. Consent to adoption may be general or special; special consent may be given only in favour of an ascendant of the child, a relative in the collateral line to the third degree or the spouse of that ascendant or relative; it may also be given in favour of the spouse or the concubinary of the father or mother, if they have been cohabiting for at least three years.

550. Consent to adoption entails, until the order of placement, delegation by operation of law of parental authority to the person to whom the child is given.

551. A person who has given his consent to adoption may withdraw it within thirty days from the date it was given.

The child must then be returned without formality or delay to the person who has withdrawn his consent.

552. If a person has not withdrawn his consent within thirty days, he may, at any time before the order of placement, apply to the court to have the child returned.

§ 4.—*Declaration of eligibility for adoption*

553. The following may be judicially declared eligible for adoption:

(1) a child over three months old, if neither his paternal filiation nor his maternal filiation has been established;

(2) a child whose care, maintenance or education has not in fact been taken in hand by his mother, father or tutor for at least six months;

(3) a child whose father and mother have been deprived of parental authority, if he has no tutor;

(4) a child who has neither father nor mother, if he has no tutor.

554. An application for a declaration of eligibility for adoption may be made by no one except an ascendant of the child, a relative in the collateral line to the third degree, the spouse of such an ascendant or relative, the child himself if fourteen years of age or over, or a director of youth protection.

555. A child cannot be declared eligible for adoption unless it is unlikely that his father, mother or tutor will resume custody of him and take in hand his care, maintenance or education. This unlikelihood is presumed.

556. The court, when declaring a child eligible for adoption, shall designate the person who is to exercise parental authority in his regard.

§ 5.—*Special conditions respecting adoption of a child domiciled outside Québec*

557. Every person domiciled in Québec wishing to adopt a child domiciled outside Québec shall previously undergo a psychosocial assessment made in accordance with the conditions provided in the Youth Protection Act.

558. The steps with a view to adoption shall be taken by the adopter, in accordance with the conditions provided in the Youth Protection Act, or, at the request of the adopter, by the Minister of Health and Social Services or an organization certified under the said Act.

559. The adoption of a child domiciled outside Québec must be granted by judicial decision either outside Québec or in Québec. A judgment granted in Québec shall be preceded by an order of placement. A judgment granted outside Québec must be recognized by the court in Québec.

SECTION II

ORDER OF PLACEMENT AND ADOPTION JUDGMENT

560. The placement of a minor cannot take place except on a court order nor can the adoption of a child be granted unless the child has lived with the adopter for at least six months since the court order.

The period may be reduced by up to three months, however, particularly in consideration of the time for which the minor may have lived with the adopter before the order.

561. An order of placement cannot be granted before the lapse of thirty days after the giving of consent to adoption.

562. Before granting an order of placement, the court shall satisfy itself that the conditions for adoption have been complied with, particularly, that the prescribed consents have been validly given.

The court shall, in addition, where the placement of a child domiciled outside Québec is made under an agreement entered into by virtue of the Youth Protection Act, verify that the procedure followed is as provided in the agreement.

Even if the adopter has not complied with the provisions of articles 557 and 558, the placement may be ordered for serious reasons if the interest of the child demands it. However, the application must be accompanied with a psychosocial assessment made by the director of youth protection.

563. The order of placement confers the exercise of parental authority on the adopter; it allows the child, for the term of the placement, to exercise his civil rights under the surname and given names chosen by the adopter, which are recorded in the order.

The order is a bar to the return of the child to his parents or to his tutor and to the establishment of filial relationship between the child and his parents by blood.

564. The effects of the order of placement cease if placement terminates or if the court refuses to grant the adoption.

565. If the adopter fails to present his application for adoption within a reasonable time after the expiry of the minimum period of placement, the order of placement may be revoked on the application of the child himself if he is fourteen years of age or over or by any interested person.

566. Where the effects of the order of placement cease and no adoption has taken place, the court, even of its own motion, shall designate the person who is to exercise parental authority over the child.

567. The court shall grant adoption on the application of the adopters unless a report indicates that the child has not adapted to his adopting family. In this case or whenever the interest of the child demands it, the court may require any additional proof it considers necessary.

568. The court, where called upon to recognize an adoption judgment rendered outside Québec, shall satisfy itself that the rules respecting consent to adoption and eligibility for adoption have been observed.

The court shall, in addition, where the adoption judgment has been rendered outside Québec under an agreement entered into by virtue of the Youth Protection Act, verify that the procedure followed is as provided in the agreement.

Even if the adopter has not complied with the provisions of articles 557 and 558, recognition may be granted for serious reasons if the interest of the child demands it. However, the application must be accompanied with a psychosocial assessment.

569. If either of the adopters dies after the order of placement, the court may grant adoption even with regard to the deceased adopter.

The court may also recognize an adoption judgment rendered outside Québec notwithstanding the death of the adopter.

570. The court shall assign to the adopted person the surname and given names chosen by the adopter unless, at the request of the adopter or of the adopted person, it allows him to keep his original surname and given names.

SECTION III

EFFECTS OF ADOPTION

571. Adoption granted in favour of adopters one of whom has died after the order of placement produces its effects from the date of the order.

572. The recognition of an adoption judgment rendered outside Québec produces the same effects as an adoption judgment rendered in Québec from the time the adoption judgment was rendered.

573. Adoption confers on the adopted person a filiation which replaces his original filiation.

The adopted person ceases to belong to his original family, subject to any impediments to marriage.

574. Adoption creates the same rights and obligations as filiation by blood.

The court may, however, according to circumstances, permit a marriage in the collateral line between the adopted person and a member of his adoptive family.

575. When adoption is granted, the effects of the preceding filiation cease; the tutor, if any, loses his rights and is discharged from his duties regarding the adopted person, save the obligation to render account.

Notwithstanding the foregoing, a person's adoption of a child of his or her spouse or concubinary does not dissolve the bond of filiation between the child and that parent.

SECTION IV

CONFIDENTIALITY OF ADOPTION FILES

576. The judicial and administrative files respecting the adoption of a child are confidential and no information contained in them may be revealed except as required by law.

However, the court may allow an adoption file to be examined for the purposes of study, teaching, research or a public inquiry, provided that the anonymity of the child, of the parents and of the adopter is preserved.

577. An adopted person of full age is entitled to obtain the information enabling him to find his parents if they have previously consented thereto. The same holds true of the parents of an adopted child if the child, once of full age, has previously consented thereto.

An adopted minor is entitled to obtain information enabling him to find his parents if the parents and the adoptive parents have previously consented thereto.

Consent must not be solicited, but one party may be informed of the application for information filed by the other party.

578. Where serious injury may be caused to the health of the adopted person, whether a minor or of full age, or of his descendants if he is deprived of the information he requires, the court may allow the adopted person to obtain the information contained in his original act of birth.

Where the adopted person is unable to act or is deceased, his descendants, whether minors or of full age, may avail themselves of such right if the fact that they are deprived of the information contained in the original act of birth of the adopted person may be the cause of serious injury to their health.

CHAPTER III

MEDICALLY ASSISTED PROCREATION

579. Participation in the parental project of another person by way of a contribution of genetic material to medically assisted procreation does not allow the creation of any bond of filiation between the contributor and the child born of that procreation.

580. No person may contest the filiation of a child on grounds relating to his medically assisted procreation, and no claim to another status is admissible from the child.

However, the husband of the mother may disavow the child or contest acknowledgement if he did not give consent to medically assisted procreation or if he proves that the child was not born of such procreation.

581. A person who, after consenting to medically assisted procreation, does not acknowledge the child born of such procreation is responsible to the mother of the child.

582. Procreation or gestation agreements on behalf of another person are null.

583. Nominative information relating to the medically assisted procreation of a child is confidential.

However, where serious injury may be caused to the health of the child, whether a minor or of full age, if he is deprived of the information he requires, the court may allow the child to obtain such information.

TITLE THREE

OBLIGATION OF SUPPORT

584. Spouses, and relatives in the direct line, owe each other support.

585. Proceedings for the support of a minor child may be instituted by the holder of parental authority, his tutor, or any person who has custody of him, according to the circumstances.

The court may order the support payable to the person who has custody of the child.

586. In awarding support, account is taken of the needs and means of the parties, their circumstances and, as the case may be, the time needed by the creditor of support to acquire sufficient autonomy.

587. The court may award provisional support to the creditor of support for the duration of the proceedings.

588. Support is payable as a pension; the court may, by way of exception, replace or complete the alimentary pension by a fixed sum payable immediately or by instalments.

589. If support is payable as a pension, it shall be indexed by operation of law on 1 January each year, in accordance with the annual Pension Index established pursuant to section 119 of the Act respecting the Québec Pension Plan, in order to maintain the real monetary value of the claim resulting from the judgment awarding support.

However, where the application of the index brings about a serious imbalance between the needs of the creditor and the means of the debtor, the court may, in exercising its jurisdiction, either fix another basis of indexation or order that the claim not be indexed.

590. The court, if it considers it necessary, may order the debtor to furnish sufficient security beyond the legal hypothec for payment of support, or order the constitution of a trust to secure such payment.

591. If the debtor offers to take the creditor of support into his home, he may, if circumstances allow, be dispensed from paying all or part of the support.

592. The creditor may pursue a remedy against one of the debtors of support or against several of them simultaneously.

The court shall fix the amount of support to be paid by each of the debtors prosecuted or impleaded.

593. The judgment awarding support, whether it is indexed or not, may be reviewed by the court whenever warranted by circumstances.

A judgment awarding payment of a fixed sum cannot be reviewed, however, even in the case of an unforeseen change in the means or needs of the parties.

594. Support may be claimed for needs existing up to one year before the application.

The creditor must prove that he was in fact unable to act sooner, unless he gave formal notice to the debtor within one year before the application, in which case support is awarded from the date of the formal notice.

595. The debtor from whom arrears are claimed may plead a change, after judgment, in his condition or in that of his creditor and be released from payment of the whole or a part of them.

However, in no case where the arrears claimed have been due for over six months may the debtor be released from payment of them unless he shows that he was unable to exercise his right to obtain a review of the judgment fixing the alimentary pension.

TITLE FOUR

PARENTAL AUTHORITY

596. Every child, regardless of age, owes respect to his father and mother.

597. A child remains subject to the authority of his father and mother until his majority or emancipation.

598. The father and mother have the rights and duties of custody, supervision and education of their children.

They must maintain their children.

599. The father and mother exercise parental authority together.

If either parent dies, is deprived of parental authority or is unable to express his or her will, parental authority is exercised by the other parent.

600. The person having parental authority may delegate the custody, supervision or education of the child.

601. No unemancipated minor may leave his domicile without the consent of the person having parental authority.

602. The person having parental authority has a right to correct the child with moderation.

603. Where the father or the mother performs alone any act of authority concerning their child, he or she is, with regard to third persons in good faith, deemed to be acting with the consent of the other parent.

604. In the case of difficulties relating to the exercise of parental authority, the person having parental authority may refer the matter to the court, which will decide in the interest of the child after fostering the conciliation of the parties.

605. Whether custody is entrusted to one of the parents or to a third person, and whatever the reasons may be, the father and mother retain the right to supervise the maintenance and education of the children, and are bound to contribute thereto in proportion to their means.

606. The court may, for a serious reason and in the interest of the child, on the application of any interested person, declare the father, the mother or either of them, or a third person on whom parental authority may have been conferred, to be deprived of such authority.

Where such a measure is not required by the situation but action is nevertheless necessary, the court may declare, instead, the withdrawal of an attribute of parental authority or of the exercise of such authority.

607. The court may, in declaring deprivation, designate the person who is to exercise parental authority, or decide to obtain, where applicable, the advice of the tutorship council before designating the person or, if required in the interest of the child, appointing a tutor.

608. Deprivation extends to all minor children born at the time of the judgment, unless the court decides otherwise.

609. Deprivation may entail the exemption of the child from the obligation to provide support, if that is warranted by exceptional circumstances.

610. A father or mother who has been deprived of parental authority or from whom an attribute of parental authority has been withdrawn may have the withdrawn authority restored, provided he or she alleges new circumstances, subject to the provisions governing adoption.

611. In no case may the father or mother, without a serious reason, place obstacles to personal relations between the child and his grandparents.

Failing agreement between the parties, the terms and conditions of these relations shall be decided by the court.

612. Decisions concerning the children may be reviewed at any time by the court, if warranted by circumstances.

BOOK THREE

SUCCESSIONS

TITLE ONE

OPENING OF SUCCESSIONS AND QUALIFICATION FOR SUCCESSION

CHAPTER I

OPENING OF SUCCESSIONS

613. The succession of a person opens by his death, at the place of his last domicile.

The succession devolves according to the prescriptions of law unless the deceased has, by testamentary dispositions, provided otherwise for the devolution of his property. Gifts *mortis causa* are, in that respect, testamentary dispositions.

614. In determining succession, the law considers neither the origin nor the nature of property; all property as a whole constitutes a single patrimony.

615. When a person dies leaving property situated outside Québec or claims against persons not residing in Québec, letters of verification may be obtained in the manner provided in the Code of Civil Procedure.

616. Where persons die and it is impossible to determine which survived the other, they are deemed to have died at the same time if at least one of them is called to the succession of the other.

The succession of each of the decedents then devolves to the persons who would have been called to take it in his place.

CHAPTER II

QUALIFICATION FOR SUCCESSION

617. Natural persons who exist at the time the succession opens, including absentees presumed to be alive at that time and children conceived but yet unborn, if they are born alive and viable, may inherit.

In the case of a substitution or trust, persons who have the required qualifications when the disposition produces its effect in their regard may also inherit.

618. The state may receive by will. Legal persons may receive by will such property as they may legally hold.

A trustee may, on behalf of the trust, receive a legacy intended for a beneficiary or a legacy to be used to accomplish the object of the trust.

619. A successor to whom an intestate succession devolves or who receives a universal legacy or a legacy by general title by will is the heir from the opening of the succession, provided he accepts it.

620. The following persons are unworthy for succession by operation of law:

(1) a person convicted of making an attempt on the life of the deceased;

(2) a person deprived of parental authority over his child while his child is exempted from the obligation of providing support, in respect of that child's succession.

621. The following persons may be declared unworthy for succession:

(1) a person guilty of cruelty towards the deceased or having otherwise behaved towards him in a seriously reprehensible manner;

(2) a person who has concealed, altered or destroyed in bad faith the will of the deceased;

(3) a person who had hindered the testator in the writing, amendment or revocation of his will.

622. An heir is not unworthy for succession nor subject to being declared so if the deceased knew the cause of unworthiness and yet conferred a benefit on him or did not modify the liberality when he could have done so.

623. Any successor may, within one year after the opening of the succession or becoming aware of a cause of unworthiness, apply to the court to declare an heir unworthy if that heir is not unworthy by operation of law.

624. The spouse in good faith of the deceased inherits if the marriage is declared null after the death.

TITLE TWO

CERTAIN RIGHTS OF SUCCESSION

CHAPTER I

SEIZIN

625. The heirs are seized, by the death of the deceased or by the event which gives effect to the legacy, of the patrimony of the deceased, subject to the provisions on the liquidation of successions.

The heirs are not, unless by way of exception provided for in this Book, bound by the obligations of the deceased to a greater extent than the value of the property they receive, and they retain their right to demand payment of their claims from the succession.

The heirs are seized of the rights of action of the deceased against any person or that person's representatives, for breach of his personality rights.

CHAPTER II

PETITION OF INHERITANCE AND ITS EFFECTS ON THE TRANSMISSION OF PROPERTY

626. A successor is entitled to have his heirship recognized at any time within ten years from the opening of the succession to which he claims to be entitled or the day his right arises.

627. An apparent heir is obliged, by the recognition of the heirship of the successor, to restore everything he has received from the succession without being entitled to it, in accordance with the rules in the Book on Obligations relating to restoration of benefits.

628. Any person who is unworthy and who has received property from the succession is deemed to be an apparent heir in bad faith.

629. Obligations of the deceased discharged by the apparent heirs otherwise than out of property from the succession shall be reimbursed by the true heirs.

CHAPTER III

THE RIGHT OF OPTION

SECTION I

DELIBERATION AND OPTION

630. Every successor has the right to accept or to renounce the succession.

The option is indivisible. However, a successor called to the succession in several ways has a separate option for each.

631. No person may exercise his option with respect to a succession not yet opened or make any stipulation with respect to such a succession, even with the consent of the person whose succession it is.

632. A successor has six months from the day his right arises to deliberate and exercise his option. The period is extended of right by as many days as necessary to afford him sixty days from the close of the inventory.

During the period for deliberation, no judgment may be rendered against the successor as an heir unless he has already accepted the succession.

633. If a successor aware of his heirship does not renounce within the period for deliberation, he is presumed to have accepted unless the period has been extended by the court. If a successor is unaware of his heirship, he may be constrained to exercise his option within the time determined by the court.

If a successor does not exercise his option within the time determined by the court, he is presumed to have renounced.

634. If the successor renounces within the period for deliberation, the lawful expenses incurred to that time are borne by the succession.

635. If the successor dies before exercising his option, his heirs shall deliberate and exercise the option within the period allotted to them for deliberation and option in respect of the succession of their ancestor.

Each of the heirs of the successor exercises his option separately; the share of an heir who renounces accrues to the co-heirs.

636. A person may cause an option he has exercised to be cancelled on the grounds and within the times prescribed for invoking nullity of contracts.

SECTION II

ACCEPTANCE

637. Acceptance is express or tacit. It may also result from the law.

Acceptance is express where the successor formally assumes the name or quality of heir; it is tacit where the successor performs an act that necessarily implies his intention of accepting.

638. A succession devolving to a minor, even an emancipated minor, or to a protected person of full age is deemed to be accepted, except where it is renounced within the time for deliberation and option,

(1) in the case of an unemancipated minor or a person of full age under tutorship or curatorship, by the representative of the successor with the authorization of the tutorship council;

(2) in the case of an emancipated minor or person of full age who requires assistance, by the successor himself, assisted by his tutor or his adviser.

In no case is the minor or the protected person of full age under protective supervision liable for the payment of debts of the succession amounting to more than the value of the property he receives.

639. The fact that the successor exempts the liquidator from making an inventory or confounds property of the succession with his personal property, unless the property was confused before the death, entails acceptance of the succession.

640. The succession is presumed to be accepted where the successor, knowing that the liquidator refuses or is neglecting to make the inventory, himself neglects to make the inventory or to apply to the court either to replace the liquidator or to order him to make the inventory within sixty days after expiry of the six months for deliberation.

641. The transfer by a person of his rights in a succession by gratuitous or onerous title entails acceptance.

The same rule applies to renunciation in favour of one or more co-heirs, even by gratuitous title, and to renunciation by onerous title, even though it be in favour of all the co-heirs without distinction.

642. Mere conservatory acts and acts of supervision and provisional administration, particularly the payment of funeral expenses and expenses related to the final illness, do not, by themselves, entail acceptance of the succession.

The same rule applies to an act rendered necessary by exceptional circumstances which the successor performs in the interest of the succession.

643. The partition of the clothing, private papers, medals and diplomas of the deceased and family souvenirs does not by itself entail acceptance of the succession if it is done with the agreement of all the successors.

Acceptance by a successor of the transmission in his favour of a site intended for a body or ashes does not entail acceptance of the succession.

644. If a succession includes perishable goods, the successor may, before the designation of a liquidator, sell them by agreement or, if he cannot find a buyer in due time, give them to charitable institutions, without implying acceptance on his part.

He may also, in the same manner as an administrator of the property of others charged with simple administration, alienate movable property which, although not perishable, is expensive to preserve or is likely to depreciate rapidly.

645. Acceptance completes the transmission which took place by operation of law at the time of death.

SECTION III

RENUNCIATION

646. Renunciation is express. It may also result from the law.

Express renunciation is made by notarial deed *en minute* or by judicial declaration in writing.

647. A person who renounces is deemed never to have been a successor.

648. A successor may renounce the succession provided that he has not performed any act entailing acceptance and that no judgment having force as *res judicata* has been rendered against him as an heir.

649. A successor who has renounced the succession retains the faculty of accepting it for ten years from the day his right arose, if it has not been accepted by another person.

Acceptance is made by notarial deed *en minute* or by judicial declaration in writing.

The heir takes the succession in its actual condition at that time and subject to the rights acquired by third parties to the property in it.

650. A successor who has been unaware of his heirship or has remained unknown for ten years from the day his right arose is deemed to have renounced the succession.

651. A successor who, in bad faith, has abstracted or concealed property of the succession or failed to include property in the inventory is deemed to have renounced the succession notwithstanding any prior acceptance.

652. The creditors of a person who renounces may, if the renunciation is damaging to them, apply within one year to the court to declare that the renunciation cannot be set up against them, and accept the succession in lieu of their debtor.

The acceptance has effect only in favour of the creditors who applied for it, and only up to the amount of their claim. It has no effect in favour of the person who renounced.

CHAPTER IV

THE SURVIVAL OF THE OBLIGATION TO PROVIDE SUPPORT

653. Every creditor of support may within six months after the death claim a financial contribution from the succession as support.

The right exists even where the creditor is an heir or a legatee by particular title or where the right to support was not exercised before the date of the death, but does not exist in favour of a person unworthy of inheriting from the deceased.

654. The contribution shall be made in the form of a lump sum payable in cash or by instalments.

The contribution made to the former spouse of the deceased who was actually receiving support at the time of the death shall be equivalent to six months of support. That made to other creditors of support shall be fixed with the concordance of the liquidator of the succession acting with the consent of the heirs and legatees by particular title or, failing agreement, by the court.

655. In fixing the contribution, the needs and means of the creditor of support, his circumstances and the time he needs to acquire sufficient autonomy or, if he was in fact receiving support from the deceased at the time of the death, the amount of the instalments that had been fixed by the court for the payment of the alimentary support or of the lump sum awarded as support shall be taken into account.

Account shall also be taken of the assets of the succession, the benefits derived from the succession by the creditor of support, the needs and means of the heirs and legatees by particular title and, where that is the case, the right to support which may be claimed by other persons.

656. Where the contribution is claimed by the spouse or a descendant, the value of the liberalities made by the deceased by act *inter vivos* during the three years preceding the death and those taking effect at the death are considered to be part of the succession for the fixing of the contribution.

657. The contribution granted to the spouse or to a descendant shall not exceed the difference between one-half of the share he could have claimed had the entire succession, including the value of the liberalities, devolved according to law, and what he receives. In other cases, it is equal to the value of six months' support.

At no time, however, may the contribution awarded to the spouse who was in fact receiving support from the deceased at the time of the death exceed the lesser of the value of six months' support and ten per cent of the value of the succession including, where such is the case, the value of the liberalities.

658. Where the assets of the succession are insufficient to make full payment of the contributions due to the spouse or to a descendant, as a result of liberalities made by acts *inter vivos* during the three years preceding the death or taking effect at the death, the court may order the liberalities reduced.

Liberalities to which the spouse or descendant consented cannot be reduced, however, and those he has received shall be debited from his claim.

659. Any alienation, security or charge granted by the deceased for a prestation clearly of smaller value than that of the property at the time it was made is presumed to be a liberality.

660. Benefits under a retirement plan contemplated in article 414 or under a contract of insurance of persons, where these benefits would have been part of the succession or would have been paid to the creditor had it not been for the designation of a subrogated holder or a beneficiary, by the deceased, during the three years preceding the death, are classed as liberalities. Notwithstanding any provision to the contrary, rights conferred by benefits under any such plan or contract may be transferred or seized for the payment of support due under this chapter.

661. The cost of education or maintenance and customary presents are not considered to be liberalities unless, considering the means of the deceased, they are manifestly exaggerated.

662. Reduction of the liberalities may operate against only one of the beneficiaries or against several of them simultaneously.

If need be, the court shall fix the share that each of the beneficiaries sued or impleaded shall pay.

663. Payment of the reduction shall be made, failing agreement between the parties, on the conditions fixed by the court and on the terms and conditions of warranty and payment it fixes.

Payment in kind shall not be ordered, but the debtor may relieve his debt at any time by handing over the property.

664. Property is valued according to its condition at the time of the liberality and its value at the opening of the succession; if property has been alienated, its value at the time of alienation or, in the case of reinvestment, the value of the replacement property on the opening day of the succession is the value considered.

Liberalities in the form of a usufruct, right of use, annuity or income from a trust are counted at their capital value on the opening day of the succession.

TITLE THREE

LEGAL DEVOLUTION OF SUCCESSION

CHAPTER I

HEIRSHIP

665. Unless otherwise provided by other testamentary dispositions, a succession devolves to the surviving spouse and relatives or, failing them, to the state, in the order and according to the rules laid down in this title.

666. The surviving spouse's heirship is not dependent on the renunciation of his matrimonial rights and benefits.

CHAPTER II

RELATIONSHIP

667. Relationship is based on ties of blood or of adoption.

668. The degree of relationship is established by the number of generations, each forming one degree. The series of degrees forms the direct line or the collateral line.

669. The direct line is the series of degrees between persons descended one from another. The number of degrees in the direct line is equal to the number of generations between the successor and the deceased.

670. The direct line of descent connects a person with his descendants; the direct line of ascent connects him with his ancestors.

671. The collateral line is the series of degrees between persons descended not one from another but from a common ancestor.

In the collateral line, the number of degrees is equal to the number of generations between the successor and the common ancestor and between the common ancestor and the deceased.

CHAPTER III

REPRESENTATION

672. Representation is a favour granted by law by which a relative is called to a succession which his ascendant, who is a closer

relative of the deceased, would have taken but is unable to take himself, having died previously or at the same time or being unworthy.

673. There is no limit to representation in the direct line of descent.

Representation is allowed whether the children of the deceased compete with the descendants of a represented child, or whether, all the children of the deceased being themselves deceased or unworthy, their descendants are in equal or unequal degrees of relationship to each other.

674. Representation does not take place in favour of ascendants, the nearer ascendant in each line excluding the more distant.

675. In the collateral line, representation takes place, between privileged collaterals, in favour of the descendants in the first degree of the brothers and sisters of the deceased, whether or not they compete with them and, between ordinary collaterals, in favour of the other descendants of the brothers and sisters of the deceased in other degrees, whether they are in equal or unequal degrees of relationship to each other.

676. No person who has renounced a succession may be represented, but a person whose succession has been renounced may be represented.

677. In all cases where representation is permitted, partition is effected by roots.

If one root has several branches, the subdivision is also made by roots in each branch, and the members of the same branch share among themselves by heads.

CHAPTER IV

ORDER OF DEVOLUTION OF SUCCESSION

SECTION I

DEVOLUTION TO THE SURVIVING SPOUSE AND TO DESCENDANTS

678. If the deceased leaves a spouse and descendants, the succession devolves to them.

The spouse takes one-third of the succession and the descendants, the other two-thirds.

679. Where there is no spouse, the entire succession devolves to the descendants.

680. If the descendants who inherit are all in the same degree and called in their own right, they share in equal portions and by heads.

If there is representation, they share by roots.

681. Unless there is representation, the descendant in the closest degree takes the share of the descendants, to the exclusion of all the others.

SECTION II

DEVOLUTION TO THE SURVIVING SPOUSE AND TO PRIVILEGED ASCENDANTS OR COLLATERALS

682. The father and mother of the deceased are privileged ascendants.

The brothers and sisters of the deceased and their descendants in the first degree are privileged collaterals.

683. Where there are neither descendants, privileged ascendants nor privileged collaterals, the entire succession devolves to the surviving spouse.

684. Where there are no descendants, two-thirds of the succession devolves to the surviving spouse and one-third to the privileged ascendants.

685. Where there are no descendants and no privileged ascendants, two-thirds of the succession devolves to the surviving spouse and one-third to the privileged collaterals.

686. Where there are no descendants and no surviving spouse, the succession is partitioned equally between the privileged ascendants and the privileged collaterals.

Where there are no privileged ascendants, the privileged collaterals inherit the entire succession, and vice versa.

687. Where the privileged ascendants inherit, they share equally; where only one of the privileged ascendants inherits, he takes the share that would have devolved to the other.

Where the privileged collaterals inherit, they share equally or by roots, as the case may be.

SECTION III

DEVOLUTION TO ORDINARY ASCENDANTS AND COLLATERALS

688. The ordinary ascendants and collaterals are not called to the succession unless the deceased left no spouse, no descendants and no privileged ascendants or collaterals.

689. If the ordinary collaterals include descendants of the privileged collaterals, these descendants take one-half of the succession and the other half devolves to the ascendants and the other collaterals.

Where there are no descendants of privileged collaterals, the entire succession devolves to the ascendants and the other collaterals, and vice versa.

690. The succession devolving to the ordinary ascendants and the other collaterals of the deceased is divided equally between the paternal and maternal lines.

In each line, the persons who inherit share by heads.

691. In each line, the ascendant in the second degree takes the share allotted to his line, to the exclusion of the other ordinary ascendants or collaterals.

Where in one line there is no ascendant in the second degree, the share allotted to that line devolves to the closest ordinary collaterals descended from that ascendant.

692. Where in one line there are no ordinary collaterals descended from the ascendants in the second degree, the share allotted to that line devolves to the ascendants in the third degree or, if there are none, to the closest ordinary collaterals descended from them, and so on until no relatives within the degrees of succession remain.

693. If there are no relatives within the degrees of succession in one line, the relatives in the other line inherit the entire succession.

694. Relatives beyond the seventh degree do not inherit.

SECTION IV

DEVOLUTION TO THE STATE

695. Where the deceased leaves no spouse or relatives within the degrees of succession, or where all the successors have renounced the succession, or where no successor is known or claims the succession, the state takes of right the property of the succession situated in Québec.

Any testamentary disposition which would render this right migatory without otherwise deciding the devolution of the property is without effect.

696. The state is not an heir, but is seized of the property of the deceased in the same manner as an heir.

It is not liable for obligations of the deceased amounting to more than the value of the property it receives.

697. Seizin of the state in respect of a succession devolving to it is exercised by the Public Curator for a period of ten years from its opening.

No property of a succession may be commingled with the property of the state so long as it remains under the administration of the Public Curator.

698. Subject to the Acts respecting public curatorship and without any other formality, the Public Curator shall act as liquidator of the succession. He shall make an inventory and give notice of the devolution in the *Gazette officielle du Québec*; he shall also cause the notice to be published in a newspaper circulated in the locality where the deceased was domiciled.

699. At the end of the liquidation, the Public Curator shall render an account to the Minister of Finance.

The Public Curator shall give notice of the liquidation in the same manner as for a notice of devolution. He shall set out in the notice the residue of the succession and shall indicate the time granted to successors to assert their rights of heirship.

700. After rendering an account, the Public Curator is responsible for the simple administration of the property of the succession. He retains the administration until an heir presents himself to claim the succession, or for a period of ten years from its opening, or again, if an action to bring a petition of inheritance has been served on the Public Curator during that time, until the action is decided.

Management of any property remaining at the end of the administration is carried out by the Public Curator on behalf of the state in accordance with the Acts respecting public curatorship.

701. An heir who claims the succession takes it in its actual condition at that time, subject to his right to claim damages if the legal formalities have not been followed.

TITLE FOUR

WILLS

CHAPTER I

THE NATURE OF WILLS

702. Every person having the required capacity may, by will, provide otherwise than as by law for the transmission upon his death of the whole or part of his property.

703. A will is a unilateral and revocable juridical instrument drawn up in one of the forms provided for by law, by which the testator disposes by liberality of all or part of his property, to take effect only after his death.

In no case may a will be made jointly by two or more persons.

704. A will may contain only dispositions regarding the liquidation of the succession, the revocation of previous testamentary dispositions or the exclusion of an heir.

705. No person may, even in a marriage contract, except within the limits provided in article 1831, renounce his right to make a will, to dispose of his property in contemplation of death or to revoke the testamentary dispositions he has made.

CHAPTER II

THE CAPACITY REQUIRED TO MAKE A WILL

706. The capacity of the testator is considered in relation to the time he made his will.

707. A minor cannot dispose of any part of his property by will, except small articles of little value.

708. A will made by a person of full age after he has been placed under tutorship may be upheld by the court if the nature of its dispositions and the circumstances in which it was drawn up allow it.

709. A person of full age under curatorship cannot make a will. A person of full age provided with an adviser may make a will without assistance.

710. A tutor, curator or adviser cannot make a will on behalf of the person whom he represents or assists, either alone or jointly with that person.

CHAPTER III

FORMS OF WILLS

SECTION I

GENERAL PROVISIONS

711. Every will must be in the form of a notarial will, a holograph will or a will made in the presence of witnesses.

712. The formalities governing the various kinds of wills shall be observed on pain of nullity.

However, if a will made in a particular form does not meet the requirements of that form of will, it is valid as a will made in another form if it meets the requirements for validity of that other form.

713. A holograph will or a will made in the presence of witnesses that does not meet the requirements of that form is valid nevertheless if it meets the essential requirements thereof and if it unquestionably and unequivocally contains the last wishes of the deceased.

714. No person may cause the validity of his will to be subject to any formality not required by law.

SECTION II

NOTARIAL WILLS

715. A notarial will shall be made before a notary *en minute*, in the presence of a witness or, in certain cases, two witnesses.

The date and place of the making of the will shall be noted on the will.

716. A notarial will shall be read by the notary to the testator alone or, if the testator chooses, in the presence of a witness. Once the reading is done, the testator shall declare in the presence of the witness that the instrument read contains the expression of his last wishes.

The will, after being read, shall be signed, in each other's presence, by the testator, the witness or witnesses and the notary.

717. The formalities governing notarial wills are presumed to have been observed even when this is not expressly stated, subject to the Acts respecting notaries.

However, where special formalities are attached to certain wills, the reason for their observance shall be mentioned in the instrument.

718. The notarial will of a testator who cannot sign shall contain a declaration by him to that effect. This declaration also shall be read by the notary to the testator in the presence of two witnesses, and it compensates for the absence of the signature of the testator.

719. The notarial will of a blind person shall be read by the notary to the testator in the presence of two witnesses.

In the will, the notary shall declare that he has read the will in the presence of the witnesses, and this declaration also shall be read.

720. The notarial will of a deaf person or a deaf-mute shall be read by the testator himself in the presence of the notary alone or, if he chooses, of the notary and a witness. If the testator is only deaf, he shall read the will aloud.

In the will, the testator shall declare that he has read it in the presence of the notary and, where such is the case, the witness.

If the testator is deaf-mute, the declaration shall be read to him by the notary in the presence of the witness; if he is deaf, it shall be

read aloud by the testator himself, in the presence of the notary and the witness.

721. A person unable to express himself aloud who wishes to make a notarial will shall convey his wishes to the notary in writing.

722. In no case may a notarial will be made before a notary who is the spouse of the testator or is related to him in either the direct or the collateral line up to and including the third degree.

723. The notary before whom a will is made may be designated in the will as the liquidator, provided his discharge of that office is gratuitous.

724. A witness called upon to be present at the making of a notarial will shall be named and designated in the will.

Any person of full age may witness a notarial will, except an employee of the attesting notary who is not himself a notary.

SECTION III

HOLOGRAPH WILLS

725. A holograph will shall be written entirely by the testator with his own hand and signed by him without the use of any mechanical process.

It is subject to no other formal requirement.

SECTION IV

WILLS MADE IN THE PRESENCE OF WITNESSES

726. A will made in the presence of witnesses shall be written by the testator or by a third person.

After making the will, the testator shall declare in the presence of two witnesses of full age that the document he is presenting is his will. He need not divulge its contents. He shall sign it at the end or, if he has already signed it, acknowledge his signature; he may also cause a third person to sign it for him in his presence and according to his instructions.

The witnesses shall thereupon sign the will in the presence of the testator.

727. Where the will is written by a third person or by a mechanical process, the testator and the witnesses shall initial or sign each page of the instrument which does not bear their signature.

The absence of initials or a signature on each page does not prevent a will made before a notary that is not valid as a notarial will from being valid as a will made in the presence of witnesses, if the other formalities are observed.

728. A person who is unable to read cannot make a will in the presence of witnesses.

729. A person who is unable to speak but able to write may make a will in the presence of witnesses, provided he indicates in writing, otherwise than by a mechanical process, in the presence of witnesses, that the writing he is presenting is his will.

CHAPTER IV

TESTAMENTARY DISPOSITIONS AND LEGATEES

SECTION I

VARIOUS KINDS OF LEGACIES

730. Legacies are of three kinds: universal, by general title and by particular title.

731. A universal legacy entitles one or several persons to take the entire succession.

732. A legacy by general title entitles one or several persons to take

(1) the ownership of an aliquot share of the succession;

(2) the usufruct of the whole or of an aliquot share of the succession;

(3) the ownership or the usufruct of the whole or an aliquot share of all the immovable or movable property, private property or acquests, or corporeal or incorporeal property.

733. Any legacy which is neither a universal legacy nor a legacy by general title is a legacy by particular title.

734. The exception of particular items of property, whatever their number or value, does not destroy the character of a universal legacy or of a legacy by general title.

735. Property left by the testator for which he made no disposition or respecting which the dispositions of his will are without effect remains in his intestate succession and devolves according to the rules governing legal devolution of successions.

736. Testamentary dispositions made under the name of an appointment of heir, a gift or a legacy, or in other terms indicating the intentions of the testator, have effect according to the rules laid down in this book with regard to universal legacies, legacies by general title or legacies by particular title.

Sufficient expression by the testator of a different intention takes precedence over the rules referred to in the first paragraph and the meaning ascribed to certain terms.

SECTION II

LEGATEES

737. A universal legatee or legatee by general title is the heir upon the opening of the succession, provided he accepts the legacy.

738. A legatee by particular title who accepts the legacy is not an heir, but is seized as an heir of the property of the bequest by the death of the deceased or by the event giving effect to his legacy.

He is not bound by the obligations of the deceased relating to the property of the bequest unless the other property of the succession is insufficient to pay the debts, in which case he is liable only up to the value of the property he takes.

739. In order to receive his legacy, the legatee by particular title is required to have the same qualifications as for succession.

He may be unworthy to receive on the same grounds as for succession; like a successor, he may apply to the court to declare an heir or a co-legatee by particular title unworthy.

740. Like a successor, a legatee by particular title has the right to deliberate and exercise his option in respect of the legacy made to him, with the same effects and according to the same rules.

741. The provisions respecting the petition of inheritance and its effects on the transmission of property are also applicable, adapted as required, to a legatee by particular title.

In all other respects, the legatee by particular title is subject to the provisions of this book respecting legatees.

SECTION III

THE EFFECT OF LEGACIES

742. Fruits and revenues from the property bequeathed are to the benefit of the legatee from the opening of the succession or the time when the disposition takes effect in his favour.

743. Bequeathed property is delivered, with its dependencies, in the condition it was in when the testator died.

This rule also applies to the rights attached to bequeathed securities, if they have not yet been exercised.

744. Where immovable property is bequeathed, any dependent or annexed immovable property acquired by the testator after signing the will is presumed to be included in the legacy, provided the property forms a unit with the immovable bequeathed.

745. The bequest of an enterprise is presumed to include the operations acquired or created after the signing of the will which, at the time of death, make up an economic unit with the bequeathed enterprise.

746. Where the payment of a legacy is subject to a term, the legatee nevertheless has an acquired right from the death of the testator which is transmissible to his own heirs or legatees by particular title.

The right of the legatee to a legacy made under a condition also is transmissible unless the condition is of a purely personal nature.

747. A legacy to a creditor is not presumed to have been made as compensation for his claim.

748. Where, in testamentary successions, the legacy is made to all the descendants or collaterals of the testator who would have been called to his succession had he died intestate, representation takes place in the same manner and in favour of the same persons as

in intestate successions, unless it is excluded by the testator, expressly or by the effect of the dispositions of the will.

Notwithstanding the foregoing, there is no representation in the matter of legacies by particular title unless the testator has so provided.

SECTION IV

LAPSE AND NULLITY OF LEGACIES

749. A legacy lapses when the legatee does not survive the testator, except where there may be representation.

A legacy also lapses when the legatee refuses it, is unworthy to receive it or, again, where he dies before the fulfilment of the suspensive condition attached to it, if the condition is of a purely personal nature.

750. A legacy also lapses if the bequeathed property perished totally during the lifetime of the testator or before the opening of a legacy made under a suspensive condition.

If the loss of the property occurs at the death of the testator, at the opening of the bequest or subsequently, the insurance indemnity is substituted for the property that perished.

751. Where a legacy charged with another legacy lapses from a cause depending on the legatee, the legacy imposed as a charge also lapses, unless the heir or legatee called to take what was the object of the bequest under the lapsed legacy is able to execute the charge.

752. A legacy made to the liquidator as remuneration lapses if he does not accept the office.

This is also the case where a legacy is made to remunerate the person appointed by the testator as tutor to a minor child or designated by him to act as the administrator of the property of others.

753. A remunerative legacy is cancelled where the liquidator, tutor or administrator of the property of others designated by the testator ceases to hold office as such; he has in this case a right to remuneration proportionate to the value of the legacy and the time for which he held office.

754. Accretion takes place in favour of the legatees by particular title where property is bequeathed to them jointly and a lapse occurs with regard to one of them.

755. A legacy by particular title is presumed to be made jointly if it is made by one and the same disposition and if the testator has not allotted each co-legatee's share of the bequeathed property or has allotted the co-legatees equal aliquot shares.

It is also presumed to be made jointly when the entire property is bequeathed by the same act to several persons separately.

756. A condition that is impossible or that is contrary to public order is deemed null.

A testamentary disposition limiting the rights of the surviving spouse in the event of remarriage is also deemed null.

757. A penal clause intended to prevent an heir or a legatee by particular title from contesting the validity of the will or any part of it is null.

An exheredation taking the form of a penal clause intended for the same purpose is also null.

758. A legacy made to the notary before whom a will is executed or to the spouse of the notary or to a relation in the first degree of the notary is null; this does not affect the other dispositions of the will.

759. A legacy made to a witness, even a supernumerary, is null, but this does not affect the other dispositions of the will.

The same is true of that part of the legacy made to the liquidator or to another administrator of property of others designated in the will which exceeds his remuneration, if he acts as a witness.

760. A legacy made to the owner, a director or an employee of a health or social services establishment who is neither the spouse nor a close relative of the testator is null if it was made while the testator was receiving care or services from the establishment.

A legacy made to a member of a foster family while the testator was residing with that family is also null.

761. A bequest of property of others is invalid, unless it appears that the intention of the testator was to oblige the heir to obtain the bequeathed property for the legatee by particular title.

762. If, owing to circumstances unforeseeable at the time of the acceptance of the legacy, the execution of a charge becomes impossible or too burdensome for the heir or the legatee by particular title, the court, after hearing the interested persons, may change it or revoke it, taking account of the value of the legacy, the intention of the testator and the circumstances.

CHAPTER V

REVOCATION OF WILLS AND LEGACIES

763. Revocation of a will or of a legacy is express or tacit.

764. Marriage entails revocation of previous wills unless the testator manifested the intention of maintaining the testamentary dispositions despite that possibility or unless the testator made the will with the knowledge that the marriage was imminent.

765. A legacy made to the spouse before divorce is revoked unless the testator manifested, by means of testamentary dispositions, the intention of benefitting the spouse despite that possibility.

Revocation of the legacy entails revocation of the designation of the spouse as liquidator of the succession.

The same rules apply if the marriage is declared null during the lifetime of the spouses.

766. Express revocation is made by a subsequent will explicitly declaring the change of intention.

A revocation that does not specifically refer to the revoked instrument is nonetheless express.

767. A will that revokes another will may be made in a different form from that of the revoked will.

768. The destruction, tearing or erasure of a holograph will or of a will made in the presence of witnesses entails revocation if it is established that this was done deliberately by the testator or on his instructions. Similarly, the erasure of any disposition of a will entails revocation of the legacy made by that disposition.

Revocation is entailed also where the testator was aware of the destruction or loss of the will and could have replaced it.

769. A subsequent testamentary disposition similarly entails tacit revocation of a previous disposition to the extent that they are inconsistent.

The revocation retains its full effect even if the subsequent disposition lapses or is revoked.

770. Voluntary or forced alienation of bequeathed property, even when made under a resolutive condition or by exchange, also entails revocation with regard to everything that has been alienated, unless the testator provided otherwise.

Revocation subsists even if the alienated property has returned into the patrimony of the testator, unless contrary intention is proved.

If the forced alienation of the bequeathed property is annulled, it does not entail revocation.

771. Revocation of a previous express or tacit revocation does not revive the original disposition, unless the testator manifested a contrary intention or unless such intention is apparent from the circumstances.

CHAPTER VI

PROOF AND PROBATE OF WILLS

772. A holograph will or a will made in the presence of witnesses is probated, on the demand of any interested person, in the manner prescribed in the Code of Civil Procedure.

The known heirs and successors shall be summoned to the probate of the will unless an exemption is granted by the court.

773. No person having acknowledged a will may thereafter contest its validity, although he may bring a demand to probate it.

In the case of contestation of an already probated will, the burden is on the person who avails himself of the will to prove its origin and regularity.

774. A will that is not produced cannot be probated; it must be reconstituted following an action in which the heirs, the other successors and the legatees by particular title have been summoned and the proof of its contents, origin and regularity must be conclusive and unequivocal.

775. Proof by testimony of a will that cannot be produced is admissible if the will has been lost or destroyed, or is in the possession of a third person, without the collusion of the person who wishes to avail himself of the will.

TITLE FIVE

LIQUIDATION OF SUCCESSIONS

CHAPTER I

OBJECT OF LIQUIDATION AND SEPARATION OF PATRIMONIES

776. The liquidation of an intestate or testate succession consists in identifying and calling in the successors, determining the content of the succession, recovering the claims, paying the debts of the succession, whether these be debts of the deceased, charges on the succession or debts of support, paying the legacies by particular title, rendering an account and delivering the property.

777. The liquidator has, from the opening of the succession and for the time necessary for liquidation, the seizin of the heirs and the legatees by particular title.

The liquidator may even claim the property against the heirs and the legatees by particular title.

778. The testator may modify the seizin, powers and obligations of the liquidator and provide in any other manner for the liquidation of his succession or the execution of his will. However, a clause that would in effect restrict the powers or obligations of the liquidator in such a manner as to prevent an act necessary for liquidation or to exempt him from making an inventory is null.

779. The patrimony of the deceased is separate from that of the heir by operation of law until the succession has been liquidated.

This separation operates in respect of both the creditors of the succession and the creditors of the heir or the legatee by particular title.

780. The property of the succession is used to pay the creditors of the succession and to pay the legatees by particular title, in preference to any creditor of the heir.

781. The property of the heir is used to pay the debts of the succession only in the case where the heir is liable for debts of greater

value than the property he takes and the property of the succession is insufficient.

In that case, payment of the creditor of the succession comes only after payment of the creditor of each heir whose claim arose before the opening of the succession. However, a creditor of the heir whose claim has arisen since the opening of the succession is paid concurrently with the unpaid creditors of the succession.

CHAPTER II

LIQUIDATOR OF THE SUCCESSION

SECTION I

DESIGNATION AND RESPONSIBILITIES OF THE LIQUIDATOR

782. Any person fully capable of exercising his civil rights may hold the office of liquidator.

A legal person authorized by law to administer the property of others may hold the office of liquidator.

783. No person is bound to accept the office of liquidator of a succession unless he is the sole heir.

784. The office of liquidator devolves as of right to the heirs unless otherwise provided by a testamentary disposition; the heirs, by majority vote, may designate the liquidator and provide the mode of his replacement.

785. A testator may designate one or several liquidators; he may also provide the mode of their replacement.

A person designated by a testator to liquidate the succession or execute his will has the quality of liquidator whether he was designated as administrator of the succession, testamentary executor or otherwise.

786. Persons holding the office of liquidator together shall act in concert, unless exempted therefrom by the will or, in the absence of a testamentary disposition, by the heirs.

If one of the liquidators is prevented from acting, the others may perform alone acts of a conservatory nature and acts requiring dispatch.

787. The court may, on the application of an interested person, designate or replace a liquidator failing agreement among the heirs or if it is impossible to appoint or replace the liquidator.

788. The liquidator is entitled to the reimbursement of the expenses incurred in fulfilling his office.

He is entitled to remuneration if he is not an heir; if he is an heir, he may be remunerated if the will so provides or the heirs so agree.

If the remuneration was not fixed by the testator, it is fixed by the heirs or, in case of disagreement among the interested persons, by the court.

789. The liquidator is not bound to take out insurance or to furnish other security guaranteeing the performance of his obligations, unless the testator or the majority of the heirs demand it or the court orders it on the application of any interested person who establishes the need for such a measure.

If a liquidator required to furnish security fails or refuses to do so, he forfeits his office, unless exempted by the court.

790. Any interested person may apply to the court for the replacement of a liquidator who is unable to assume his responsibilities of office, who neglects his duties or who does not fulfil his obligations.

During proceedings, the liquidator continues to hold office unless the court decides to designate an acting liquidator.

791. Where the liquidator is not designated, delays to accept or decline the office or is to be replaced, any interested person may apply to the court to have seals fixed, an inventory made, an acting liquidator appointed or any other order rendered which is necessary to preserve his rights. These measures benefit all the interested persons but create no preference among them.

The costs of inventory and seals are chargeable to the succession.

792. Acts performed by a person who, in good faith, believed he was liquidator of the succession are valid and may be set up against all persons.

SECTION II

INVENTORY OF THE PROPERTY

793. The liquidator is bound to make an inventory; he shall make it in the manner prescribed in the title on Administration of the Property of Others.

794. Closure of the inventory shall be published in the register of personal rights by registration of a notice identifying the deceased and indicating the place where the inventory may be consulted by interested persons.

795. The liquidator shall inform the heirs, the successors who have not yet exercised their option and the legatees by particular title of the registration of the notice of closure and of the place where the inventory may be consulted, and shall transmit a copy of the inventory to them if that may be easily done.

796. The creditors of the succession, the heirs, the successors and the particular legatees may contest the inventory or any item in it; they may also concur on the revision of the inventory or apply for the making of a new inventory.

797. Where an inventory has already been made by an heir or another interested person, the liquidator shall verify it. He shall also ascertain that the notice of closure has been registered and that everyone who should be informed has been informed.

798. The liquidator may be exempted from making an inventory, but only with the consent of all the heirs and successors.

If they give their consent, the heirs, and the successors having by that fact become heirs, are liable for the debts of the succession beyond the value of the property they take.

799. Where the heirs, knowing that the liquidator refuses or is neglecting to make the inventory, themselves neglect, for sixty days following the expiration of the six month period for deliberation, either to proceed to the inventory or to apply to the court to replace the liquidator or to enjoin him to proceed to the inventory, they shall be held liable for the debts of the succession beyond the value of the property they take.

800. Heirs who, before the inventory, confound the property of the succession with their personal property, unless the property

was already confused before the death, such as in the case of cohabitation, shall likewise be held liable for the debts of the succession beyond the value of the property they take.

If the confusion arises after the inventory but before the end of the liquidation, they shall be held personally liable for the debts up to the value of the confused property.

SECTION III

FUNCTIONS OF THE LIQUIDATOR

801. The liquidator shall act in respect of the property of the succession as an administrator of the property of others charged with simple administration.

802. The liquidator shall make a search to ascertain whether the deceased made a will.

Where such is the case, the liquidator shall cause the will to be probated, cause it to be entered in the appropriate register and take all the necessary steps for its execution.

803. The liquidator shall administer the succession. He shall realize the property of the succession to the extent necessary to pay the debts and the legacies by particular title.

804. A liquidator cannot alienate property, other than movable property that is perishable, likely to depreciate rapidly or expensive to preserve, except with the authorization of the court, unless he obtains the consent of all the heirs. Nor can he alienate immovable property without such consent, except in case of necessity or obvious advantage.

The heirs, by reason of their consent, shall be held liable for the debts of the succession beyond the value of the property they take.

805. A liquidator who has an action to bring against the succession shall give notice thereof to the Public Curator. The latter shall act *ex officio* as liquidator *ad hoc*, unless the heirs or the court designate another person.

806. If the liquidation takes longer than one year, the liquidator shall, at the end of the first year, and at least once a year thereafter, render an annual account of management to the heirs, creditors and legatees by particular title who have not been paid.

807. Where the succession is manifestly solvent, the liquidator, after satisfying himself that all the creditors and legatees by particular title can be paid, may pay advances to the creditors of support and to the heirs and legatees by particular title. The advances shall be deducted from the shares of those who receive them.

CHAPTER III

PAYMENT OF DEBTS AND OF LEGACIES BY PARTICULAR TITLE

SECTION I

PAYMENTS BY THE LIQUIDATOR

808. If the property of the succession is sufficient to pay all the creditors and all the legatees by particular title and if there are no proceedings pending, the liquidator shall pay the known creditors and known legatees by particular title as and when they present themselves.

The liquidator shall pay the ordinary public utility bills and repay the outstanding debts as and when they become due or according to the agreed terms and conditions.

809. The liquidator shall pay, in the same manner as any other debt of the succession, the compensatory allowance to the surviving spouse and any other debt resulting from the liquidation of the patrimonial rights of the spouses, as agreed between the heirs, the legatees by particular title and the spouse or, failing such agreement, as determined by the court.

810. Where the succession is not manifestly solvent, the liquidator cannot pay the debts of the succession or the legacies by particular title until the expiry of sixty days from registration of the notice of closure of inventory or from the exemption from making an inventory.

The liquidator may pay the ordinary public utility bills and the debts in urgent need of payment before the expiry of that time, however, if circumstances require it.

811. If proceedings are pending or if the property of the succession is insufficient, the liquidator cannot pay any debt or any legacy by particular title before drawing up a full statement thereof, giving notice thereof to the interested persons and obtaining homologation by the court of a payment proposal which contains a provision for a reserve for the payment of any future judgment.

812. Where the property of the succession is insufficient, the liquidator, in accordance with his payment proposal, shall first pay the preferred or hypothecary creditors, according to their rank; next, he shall pay the other creditors, except with regard to their claims for support, and, if he is unable to repay them fully, he shall pay them *pro rata* to their claims.

If property remains after the creditors have been paid, the liquidator shall pay the creditors of support, *pro rata* to their claims if he is unable to pay them fully, and he shall then pay the legatees by particular title.

813. The liquidator may alienate property bequeathed as legacies by particular title or reduce the legacies by particular title if the other property of the succession is insufficient to pay all the debts.

The alienation or reduction is effected in the order and in the proportions agreed the legatees. Failing agreement, the liquidator shall first reduce the legacies not having preference under the will nor involving an individual property, *pro rata* to their value. Where the property is still insufficient, he shall reduce or alienate the legacies of individual property, then the legacies having preference, *pro rata* to their value.

The legatees may always agree to another mode of settlement or be relieved by giving back their legacies or equivalent value.

814. If the property of the succession is insufficient to pay all the legatees by particular title, the liquidator, in accordance with his payment proposal, shall first pay those having preference under the will and then the legatees of an individual property. The other legatees shall then incur the reduction of their legacies *pro rata*, and the remainder shall be partitioned among them *pro rata* to the value of each legacy.

SECTION II

PAYMENTS MADE BY THE HEIRS AND LEGATEES BY PARTICULAR TITLE

815. Known creditors and legatees by particular title who have been neglected in the payments made by the liquidator have, apart from their action in damages against the liquidator, an action against the heirs and against the legatees by particular title paid to their detriment.

The creditors also have a subsidiary action against the other creditors in proportion to their claims, taking account of clauses of preference.

816. Creditors and legatees by particular title who, remaining unknown, do not present themselves until after the payments have been regularly made have no action against the heirs or against the legatees by particular title paid to their detriment unless they prove that they had a serious reason for not presenting themselves in due time.

In no case do they have an action if they present themselves after the expiry of three years from the discharge of the liquidator, or any preference over the personal creditors of the heirs or legatees.

817. Where the reserve provided for in a payment proposal is insufficient, the creditor has, for the payment of his share of the outstanding claim, an action against the heirs and legatees by particular title up to the amount they received and a subsidiary action against the other creditors, in proportion to their claims, taking account of causes of preference.

818. A hypothecary creditor having an outstanding claim conserves, in addition to his personal action, his hypothecary rights against the person who received the hypothecated property.

819. The sole heir to a succession is liable, up to the value of the property he takes, for all the debts remaining outstanding at the end of the liquidation.

Where a succession devolves to several heirs, each of them is liable for the debts only in proportion to the share he receives as an heir, subject to the rules governing indivisible debts.

820. The legatee by general title of the usufruct is solely liable to the creditors for the debts left unpaid by the liquidator, even for the capital, proportionately to what he receives, and also for hypothecs charged on any property he has received.

The relative contributions of the legatee by general title of the usufruct and of the bare owner are established according to the rules prescribed in the Book on Property.

821. The legatee by general title of the usufruct of the entire succession is, without recourse against the bare owner, liable for payment of any annuities or support established by the testator, and for payment of the interest on debts left unpaid by the liquidator.

822. The heirs are liable, as in the case of payment of the debts, for payment of the legacies by particular title left unpaid at the end of the liquidation, but never for more than the value of the property they take.

If a legacy is imposed on a specific heir, however, the action of the legatee by particular title does not lie against the others.

823. The legatees by particular title are liable for payment of the debts and legacies left unpaid at the end of the liquidation only where the other property is insufficient.

Where a legacy by particular title is made jointly to several legatees, each of them is liable for the debts and legacies only in proportion to his share in the bequeathed property, subject to the rules on indivisible debts.

824. When a legacy by particular title includes a universality of assets and liabilities, the legatee is solely liable for payment of the debts connected with the universality, subject to the subsidiary action of the creditors against the heirs and the other legatees by particular title where the property of the universality is insufficient.

825. An heir or a legatee by particular title who has paid part of the debts and legacies in excess of his share has an action against his co-heirs or co-legatees for the reimbursement of the excess over his share. His action lies, however, only for the share that each of them ought to have paid individually, even if he is subrogated to the rights of the person who was paid.

826. If one of the co-heirs or co-legatees is insolvent, his share in the payment of the debts or in the reduction of the legacies is divided among his co-heirs or co-legatees in proportion to their respective shares, unless one of the co-heirs or co-legatees agrees to bear the entire amount.

827. A usufruct established on bequeathed property is borne without recourse by the legatee of the bare ownership.

Similarly, a servitude is borne without recourse by the legatee of the property charged with it.

828. Where the rights of action of the unpaid creditors or legatees by particular title are exercised before partition, account shall be taken, in the composition of the shares, of the actions of the heirs or legatees against their co-heirs or co-legatees for the amounts they paid in excess of their shares.

Where the rights of action of the unpaid creditors or legatees are exercised after partition, those of the heirs or legatees who paid more than their share are exercised, where such is the case, according to the rules applicable to the warranty of co-partitioners, unless the instrument of partition stipulates otherwise.

829. The testator may change the manner and proportion in which the law holds his heirs and legatees by particular title liable for payment of the debt and imposes reduction of the legacies on them.

The changes cannot be set up against the creditors; they operate only between the heirs and the legatees by particular title.

830. An heir having assumed payment of the debts of the succession beyond the value of the property he takes or being liable for them may be pursued on his personal property for his share of the debts left unpaid.

831. An heir having assumed payment of the debts of the succession or being liable for them under the rules of this title may, if he was in good faith, move that the court reduce his liability or limit it to the value of the property he has taken if new circumstances substantially change the extent of his liability, including, but not limited to, his discovery of new facts, or the coming forward of a creditor of whose existence he could not have been aware when he assumed the liability.

CHAPTER IV

END OF LIQUIDATION

832. Liquidation ends when the known creditors and the known legatees by particular title have been paid or when payment of their claims and legacies is otherwise settled or assumed by heirs or legatees by particular title.

It also ends when the assets are exhausted.

833. The object of the final account of the liquidator is to determine the net assets or the deficit of the succession.

The final account shall indicate the debts and legacies left unpaid, those warranted by security or taken charge of by heirs or legatees by particular title and those the payment of which is settled otherwise, specifying the mode of payment for each. Where applicable, it shall establish the reserves needed for the execution of future judgments.

The liquidator shall append a proposal for partition to his account if that is required by the will or the majority of the heirs.

834. The liquidator, at any time and with the concurrence of all the heirs, may render an amicable account without judicial formalities. The cost of rendering the account shall be borne by the succession.

If an amicable account cannot be rendered, the account shall be rendered in court.

835. After acceptance of the final account, the liquidator is discharged of his administration and shall make delivery of the property to the heirs.

Closure of the account shall be published in the register of personal and movable rights by registration of a notice identifying the deceased and indicating the place where interested persons may consult the account.

TITLE SIX

PARTITION OF SUCCESSIONS

CHAPTER I

RIGHT TO PARTITION

836. Partition cannot take place or be applied for before the liquidation is terminated and the final account of the liquidator has been accepted.

837. The testator, for a serious and legitimate reason, may order partition wholly or partly deferred for a limited time. He may also order it deferred if, to carry out his intentions fully, the powers and obligations of the liquidator must continue to be held under another title.

838. If all the heirs agree, partition is made in accordance with the proposal appended to the final account of the liquidator; otherwise, partition is made as they see best.

If the heirs disagree, partition cannot take place except under the conditions laid down in Chapter II and in the forms required by the Code of Civil Procedure.

839. Notwithstanding an application for partition, undivided ownership may be continued of a family enterprise that had been

operated by the deceased, or of the stocks, shares or other securities connected with the enterprise where the deceased was the principal partner or shareholder.

840. Undivided ownership may also be continued of the family residence or of movable property serving for the use of the household, even where a right of ownership, usufruct or use is awarded to the surviving spouse.

841. An heir who before the death actively participated in the operation of the family enterprise or lived in the family residence may make an application to the court for the continuance of undivided ownership.

842. When deciding an application for the continuance of undivided ownership, the court shall take into account the testamentary dispositions, as well as the existing interests and means of livelihood which the family and the heirs draw from the undivided property; in all cases, the agreements among the partners or shareholders to which the deceased was a party shall be respected.

843. On the application of an heir, the court may, to avoid a loss, stay the immediate partition of the whole or part of the property and continue the undivided ownership of it.

844. Continuance of undivided ownership takes place under the conditions fixed by the court but shall not be granted for a duration of more than five years except with the agreement of all the interested persons.

It may be renewed until the death of the spouse or until the majority of the youngest child of the deceased.

845. The court may order partition where the causes that justified the continuance of undivided ownership have ceased or where undivided ownership has become intolerable or highly riskful for the heirs.

846. If an application for the continuance of undivided ownership contemplates a particular item of property or a group of properties, nothing prevents proceeding to partition of the residue of the property of the succession. Furthermore, the heirs may always satisfy an heir who objects to the continuance of undivided ownership by paying his share themselves or granting him, after evaluation, certain other property of the succession.

847. A person entitled to enjoyment of only a share of the undivided property has no right to participate in a partition, except a provisional partition.

848. Every heir may exclude from the partition a person who is not an heir but to whom another heir transferred his right in the succession, by repaying him the value of the right at the time of the redemption and his disbursements for costs related to the transfer.

CHAPTER II

MODES OF PARTITION

SECTION I

COMPOSITION OF SHARES

849. Partition may include all or only part of the undivided property.

Partition of an immovable is deemed to have been carried out even if parts remain which are common and indivisible or which are intended to remain undivided.

850. If the undivided shares are equal, as many shares shall be composed as there are heirs or partitioning roots.

If the undivided shares are unequal, as many shares as necessary to allow a drawing of lots shall be composed.

851. In composing the shares, account shall be taken of the testamentary dispositions, particularly those charging certain heirs with payment of debts or legacies, as well as the rights of action the heirs have against each other for the amounts they paid in excess of their shares; account shall also be taken of the rights of the surviving spouse, the applications for allotment by preference, the objections and, where such is the case, the reserve funds for settling future judgments.

Consideration may also be given to, among other things, the fiscal consequences of the allotments, the intention shown by certain heirs to take charge of certain debts or the convenience of the mode of allotment.

852. In composing the shares, immovables should not be broken up, nor should enterprises be divided.

So far as the breaking up of immovables and the division of enterprises can be avoided, each share shall, as far as possible, be composed of movable or immovable property and rights or claims of equivalent value.

Any inequality in the value of the shares shall be compensated for by a balance.

853. Undivided owners making an amicable partition shall compose the shares as they see fit and reach a consensus on their allotment or on a drawing of lots for them.

If they consider it necessary to sell the property to be partitioned or some of it, they shall also reach a consensus on the terms and conditions of sale.

854. If the undivided owners fail to agree on the composition of the shares, these shall be composed by an expert designated by the court; if the disagreement has to do with the allotment of the shares, it shall be made by a drawing of lots.

Before the drawing, each undivided owner may raise objections to the composition of the shares.

SECTION II

PREFERENTIAL ALLOTMENTS AND CONTESTATION

855. Each heir shall receive his share of the property of the succession in kind, and may apply for the allotment of a particular item or share by way of preference.

856. The surviving spouse may, in preference to any other heir, require that the family residence or the rights conferring use of it, together with the movable property serving for the use of the household, be placed in his share.

If the value of the property exceeds the share due to the spouse, he shall keep the property, subject to a balance.

857. Subject to the rights of the surviving spouse, if several heirs apply for the allotment, by preference, of the immovable that served as the residence of the deceased, the person who was living in it has preference over the others.

858. Notwithstanding any objection or application for an allotment by preference presented by another co-partitioner, the

enterprise or the capital shares, stocks or other securities connected with the enterprise are allotted by preference to the heir who was actively participating in the operation of the enterprise at the time of the death.

859. If several heirs have the same right of preference and an application for an allotment is contested, the contestation shall be settled by a drawing of lots or, if it concerns the allotment of the residence, the enterprise or the securities connected with the enterprise, by the court. In this case, account shall be taken of, among other things, the interests involved, the reasons for the preference of each party or the degree of his participation in the enterprise or in the upkeep of the residence.

860. Where the contestation among the co-partitioners is over the determination or payment of a balance, the court shall determine it and may, if necessary, fix the appropriate terms and conditions of guarantee and payment in the circumstances.

861. The property is appraised according to its condition and value at the time of partition.

862. If certain property cannot be conveniently partitioned or allotted, the interested persons may decide to sell it.

863. If the interested persons cannot agree, the court may, where applicable, designate appraisers to evaluate the property, order the sale of the property that cannot conveniently be partitioned or allotted and fix the terms and conditions of sale; or it may order a stay of partition for the time it indicates.

864. In order that the partition not be made in fraud of their rights, the creditors of the succession, and those of an heir, may be present at the partition and intervene at their own expense.

SECTION III

DELIVERY OF TITLES

865. After partition, the titles common to the entire inheritance or to a part of it shall be delivered to the person chosen by the heirs to act as depositary, on the condition that he shall assist the co-partitioners in this matter at their request. Failing agreement on the choice, it shall be made by a drawing of lots.

866. At partition, any heir may apply for and obtain a copy of the titles to property in which he preserves rights. The costs so incurred shall be shared.

CHAPTER III

RETURN

SECTION I

RETURN OF GIFTS AND LEGACIES

867. With a view to partition, each co-heir is bound to return to the mass only what he has received from the deceased by gift or by will under an express obligation to return it.

A successor who renounces the succession is not obliged to make any return.

868. A representative, in addition to what he is obliged to return in his own right, shall return what the person represented would have had to return.

A return is due even if the representative has renounced the inheritance of the person represented.

869. A return is made only to the succession of the donor or of the testator.

It is due only from one co-heir to another and is not due to the legatees by particular title or to the creditors of the succession.

870. A return is made by taking less.

Any provision requiring the heir to make a return in kind is null. However, the heir may elect to make the return in kind if he still owns the property, unless he has charged it with a usufruct, servitude, hypothec or other real right.

871. Each co-heir to whom a return by taking less is due shall pre-take from the mass of the succession property equal in value to the amount of the return.

As far as possible, pre-takings shall be made in property of the same kind and quality as that which must be returned.

If it is impossible to pre-take in the manner described, the heir returning may either pay the cash value of the property received or

allow each co-heir to pre-take other equivalent property from the mass.

872. A return by taking less may also be made by debiting the cash value of the property received to the share of the heir.

873. Unless otherwise provided in the gift or will, property returned by taking less is valued at the time of partition if it is still in the hands of the heir, or on the date of alienation if it was alienated before partition.

Bequeathed property, and that which remains in the succession, is valued according to its condition and value at the time of partition.

874. The value of property returned by taking less or in kind shall be reduced by the increase in value of the property resulting from the expenditures or personal initiative of the person returning it.

It shall also be reduced by the amount of the necessary disbursements.

Conversely, the value shall be increased by the decrease in value resulting from the actions of the person making the return.

875. The heir is entitled to retain the property that must be returned in kind until he has been reimbursed the amounts he is owed.

876. An heir is bound to return property the loss of which results from his actions; he is not bound to do so if the loss results from an irresistible force.

In either case, he shall return any compensation paid to him for the loss of the property.

877. The co-partitioners may agree that property affected by a hypothec or other real right shall be returned in kind; the return is then made without prejudice to the holder of the right. The obligation resulting therefrom is, in the partition of the succession, charged against the person who makes the return.

878. The fruits and revenues of the property given or bequeathed, if the property is returned in kind, or the interest on the amount returnable, are also returnable from the opening of the succession.

SECTION II

RETURN OF DEBTS

879. An heir coming to a partition shall return to the mass the debts he owes to the deceased; he shall also return the amounts he owes to his co-partitioners by reason of the indivision.

These debts are subject to return even if they are not due when partition takes place; they are not subject to return if the testator provided for release therefrom to take effect at the opening of the succession.

880. If the amount in capital and interest of the debt to be returned exceeds the value of the hereditary share of the heir who is bound to make the return, the heir remains indebted for the excess and shall pay it according to the terms and conditions attached to the debt.

881. If an heir bound to make a return has a claim of his own to make, even though it is not exigible at the time of partition, compensation operates and he is bound to return only the balance of his debt.

Compensation also operates if the claim exceeds the debt and the heir remains creditor for the excess.

882. A return is made by taking less.

The deduction effected by the co-heirs or the debiting of the amount to the share of the heir may be set up against the personal creditors of the heir who is bound to make the return.

883. A return must be made of the value of the debt in capital and interest at the time of partition.

A returnable debt bears interest from the death if it precedes the death and from the date when it arose if it arose after the death.

CHAPTER IV

EFFECTS OF PARTITION

SECTION I

THE DECLARATORY EFFECT OF PARTITION

884. Partition is declaratory of ownership.

Each co-partitioner is deemed to have inherited, alone and directly, all the property included in his share or which devolves to him through any partial or complete partition. He is deemed to have owned the property from the death, and never to have owned the other property of the succession.

885. Any act the object of which is to terminate indivision between co-partitioners is valid as a partition, even though the act is described as a sale, an exchange, a transaction or otherwise.

886. Subject to the provisions respecting the administration of undivided property and the juridical relationships between an heir and his successors, acts performed by an undivided heir and real rights granted by him in property which has not been allotted to him cannot be set up against any other undivided heirs who have not consented to them.

887. Acts validly made during indivision resulting from death retain their effect, regardless of which heir receives the property at partition.

Each heir is then deemed to have made the acts concerning the property which devolves to him.

888. The declaratory effect also applies to claims against third persons, to any assignment of these claims made during indivision by one of the co-heirs and to any seizure of the claims by the creditors of one of the co-heirs.

The setting up of claims against debtors is subject to the rules of the Book on Obligations relating to assignment of debts.

SECTION II

WARRANTY OF CO-PARTITIONERS

889. Co-partitioners are warrantors towards each other only for the disturbances and evictions arising from a cause prior to the partition.

Each co-partitioner remains a warrantor nevertheless for any eviction caused by his personal act.

890. The insolvency of the debtor for a claim devolving to one of the co-partitioners gives rise to warranty in the same manner as an eviction, if the insolvency occurred prior to partition.

891. The warranty does not occur if the eviction has been excepted by a stipulation in the act of partition; it terminates if the co-partitioner is evicted through his own fault.

892. Each co-partitioner is personally bound in proportion to his share to indemnify his co-partitioner for the loss which the eviction has caused him.

The loss is valued as on the day of the partition.

893. If one of the co-partitioners is insolvent, the indemnity for which he is liable shall be divided proportionately between the warrantee and all the solvent co-partitioners.

894. The action in warranty is prescribed by three years from eviction or discovery of the disturbance, or from partition if it is caused by the insolvency of a debtor for the succession.

CHAPTER V

NULLITY OF PARTITION

895. Partition, even partial, may be annulled because of lesion or for any other cause of nullity of contracts.

A supplementary or corrective partition may be effected, however, in any case where it is to the advantage of the co-partitioners to do so.

896. Mere omission of undivided property does not give rise to an action in nullity, but only to a supplement to the act of partition.

897. In deciding whether lesion has occurred, the value of the property shall be considered as at the time of partition.

898. The defendant in an action in nullity of partition may, in all cases, have the action terminated and prevent a new partition by offering and delivering to the plaintiff the supplement of his share of the succession in money or in kind.

BOOK FOUR

PROPERTY

TITLE ONE

KINDS OF PROPERTY AND ITS APPROPRIATION

CHAPTER I

KINDS OF PROPERTY

899. Property, whether corporeal or incorporeal, is divided into immovables and movables.

900. Land, plants and minerals as long as they are not separated or extracted from the land, and constructions and works fixed in the ground, together with all the movables forming an integral part of them, are immovables.

Fruits and other products of the soil may be considered to be movables, however, when they are the principal object of an act of alienation.

901. Movables forming an integral part of an immovable retain their immovable character if they are only temporarily detached from the immovable and are destined to be put back.

902. Movables which, without losing their individuality, are placed for a permanency by their owner on his immovable for the service or operation thereof are immovables for as long as they remain there. The same rule applies to movables which are incorporated with the immovable in the same way.

903. Real rights in immovables, as well as actions to assert such rights or to obtain possession of immovables, are immovables.

904. Things which can be moved either by themselves or by an extrinsic force are movables.

905. Claims and other incorporeal rights attested by a bearer instrument, and waves or energy harnessed and put to use by man, whether their source is movable or immovable, are deemed corporeal movables.

906. All other property, if not qualified by law, is movable.

CHAPTER II

PROPERTY IN RELATION TO ITS PROCEEDS

907. Property, according to its relation to other property, may be divided into capital, and fruits and revenues.

908. Property that produces fruits and revenues, property appropriated for the service or operation of an enterprise, shares of the capital stock or common shares of a legal person or partnership, the reinvestment of the fruits and revenues, the price for any disposal of capital or its reinvestment, and expropriation or insurance indemnities in replacement of capital, are capital.

Capital also includes rights of intellectual or industrial property except sums derived therefrom without alienation of the rights, bonds and other loan certificates payable in cash and rights the exercise of which tends to increase the capital, such as the right to subscribe to securities of a legal person, limited partnership or trust.

909. Fruits and revenues are that which is produced by property without any alteration to its substance or that which is derived from the use of capital. They also include rights the exercise of which tends to increase the fruits and revenues of the property.

Fruits comprise things spontaneously produced by property or produced by the cultivation or working of land, and the produce or increase of animals.

Revenues comprise sums of money yielded by property, such as rents, interest and dividends, except those representing the distribution of the price of alienation of assets of a company; they also comprise sums received by reason of the cancellation or renewal of a lease or of prepayment, or sums allotted or collected in similar circumstances.

CHAPTER III

PROPERTY IN RELATION TO PERSONS HAVING RIGHTS IN IT OR POSSESSION OF IT

910. A person, alone or with others, may hold a right of ownership or other real right in a property, or have possession of the property.

A person also may hold or administer the property of others or be trustee to a patrimony.

911. The holder of a right of ownership or other real right may take legal action to have his right acknowledged.

912. Certain things such as water and air cannot be appropriated; their use, common to all, is governed by laws of public interest and, in certain respects, by this Code.

Water and air may nevertheless be considered to be objects of ownership if they are not intended for public utility and if they are collected in man-made receptacles from which they cannot naturally escape.

913. Certain other things, being ownerless, are not the object of any right, but may nevertheless be appropriated by occupation if the person taking them does so with the intention of becoming their owner.

914. Property belongs to the state or to persons or, in certain cases, is appropriated to a purpose.

Property of the state and property of legal persons of public right is governed by public law and, where it is necessary to complement the rules thereof, by this Code.

915. Property is acquired by contract, succession, occupation, prescription, accession or any other mode provided by law.

No one may appropriate property of the state for himself by occupation, prescription or accession except property the state has acquired by succession, vacancy or confiscation, so long as it has not been confused with its other property. Nor may anyone acquire for himself property of legal persons of public right that is appropriated to public utility.

916. Property confiscated under the law is, upon being confiscated, property of the state or, in certain cases, of the legal person of public right authorized by law to confiscate it.

917. Parts of the territory not owned by natural persons or legal persons nor transferred to a trust patrimony belong to the state and form part of its domain. The state is presumed to have the original titles to such property.

918. The beds of navigable and floatable lakes and watercourses are property of the state up to the high-water line.

The same is true of the beds of non-navigable and non-floatable lakes and watercourses bordering lands alienated by the state after 9 February 1918; before that date, ownership of the riparian land carried with it, upon alienation, ownership of the beds of non-navigable and non-floatable watercourses.

In all cases, the law or the act of concession may provide otherwise.

919. Any person may travel on watercourses and lakes provided he gains legal access to them, does not encroach on the rights of the riparian owners and observes the conditions of use of the water.

CHAPTER IV

CERTAIN *DE FACTO* RELATIONSHIPS CONCERNING PROPERTY

SECTION I

POSSESSION

§ 1.—*The nature of possession*

920. Possession is the exercise in fact, by a person himself or by another person having detention of the property, of a real right, with the intention of acting as the holder of that right.

The intention is presumed. Where it is lacking, there is merely detention.

921. To produce legal effects, possession must be peaceful, continuous, public and unequivocal.

922. A person having begun to detain property on behalf of another or with acknowledgement of a superior domain is presumed to continue to detain it in that quality unless inversion of title is proved on the basis of unequivocal facts.

923. Merely facultative acts or acts of sufferance do not found possession.

924. The present possessor is presumed to have been in continuous possession from the time he came into possession; he may join his possession to that of his predecessors.

Possession is continuous even if its exercise is temporarily prevented or interrupted.

925. Defective possession begins to produce effects only from the time the defect ceases.

Successors by whatever title do not suffer from defects in the possession of their predecessor.

926. No thief, receiver of stolen goods or defrauder may invoke the effects of possession, but his successors by whatever title may do so.

§ 2.—*Effects of possession*

927. A possessor is presumed to hold the real right he is exercising. A person contesting that presumption has the burden of proving his own right and, as the case may be, that the possessor has no title, a defective title, or defective possession.

928. A possessor in continuous possession for more than a year has a right of action against any person who disturbs his possession or dispossesses him in order to put an end to the disturbance or be put back into possession.

929. Possession vests the possessor with the real right he is exercising if he complies with the rules on prescription.

930. A possessor in good faith need not render account of the fruits and revenues of the property, and he bears the costs he incurred to produce them.

A possessor in bad faith shall, after compensating for the costs, return the fruits and revenues from the time he began to be in bad faith.

931. A possessor is in good faith if, when his possession begins, he is justified in believing he holds the real right he is exercising. His good faith ceases from the time his lack of title or the defects of his possession or title are notified to him by a civil proceeding.

932. A possessor may be reimbursed or indemnified according to the rules under the heading of accession for the constructions, plantations and works he has made.

SECTION II

ACQUISITION OF VACANT PROPERTY

§ 1.—*Ownerless property*

933. Property which has no owner, such as animals in the wild, or formerly in captivity but returned to the wild, aquatic fauna and property voluntarily abandoned by its owner, is ownerless property.

Movables of slight value or in a very deteriorated condition that are left in a public place, including a public road or a vehicle used for public transportation, are deemed abandoned.

934. An ownerless movable belongs to the person who appropriates it for himself by occupation.

An abandoned movable, if no one appropriates it for himself, belongs to the municipality that collects it in its territory, or by the state.

935. An ownerless immovable belongs to the state. Any person may nevertheless acquire it by accession or prescription unless the state has possession of it or is declared the owner of it by a notice of the Public Curator entered in the land register.

936. Ownerless property which the state appropriates for itself is administered by the Public Curator, who shall dispose of it according to law.

937. Treasure belongs to the finder if he finds it on his own land; if it is found on another person's land, one-half belongs to the owner of the land and one-half to the finder, unless the finder was acting for the owner.

§ 2.—*Lost or forgotten movables*

938. A movable that is lost or that is forgotten in the hands of a third person or in a public place continues to belong to its owner.

The movable cannot be acquired by occupation, but may be prescribed, as may the price subrogated thereto.

939. The finder of property shall attempt to find its owner; if he finds him, he shall return it to him.

940. The finder of lost property, in order to acquire, by prescription, ownership of it or of the price subrogated to it, shall declare the fact that he has found it to a peace officer, to the municipality in whose territory it was found or to the person in charge of the place where it was found.

He may then, at his option, keep the property, dispose of it in the manner of a person having detention or hand it over for detention to the person to whom he made the declaration.

941. The holder of found property, including the state or a municipality, may sell it if it is not claimed within sixty days.

The sale of the property shall be held by auction and on the expiry of not less than ten days after publication of a notice of sale in a newspaper circulated in the locality where the property was found, stating the nature of the property and indicating the place, day and hour of the sale.

The holder may dispose of the property immediately, however, if it is perishable. Also, if there is no bidder at the auction, he may sell the property by agreement, give it to a charitable institution or, if it is impossible to dispose of it in this way, destroy it.

942. The state or a municipality may, in the manner of the holder of found property, sell movable property in its hands at auction, regardless of elapsed time other than that required for publication, in the following cases:

(1) The owner of the property claims it but neglects or refuses to reimburse the holder for the cost of administration of the property within sixty days of claiming it;

(2) Several persons claim the property as owner, but none of them establishes a clear title or takes legal action to establish it within the sixty days or more allotted to him;

(3) A movable deposited in the office of a court is not claimed by its owner within sixty days from notice given him to fetch it or, if it has not been possible to give him any notice, within six months from the final judgment or from the discontinuance of the proceedings.

943. Where property that has been entrusted for safekeeping, work or processing is not claimed within ninety days from completion of the work or the agreed time, it is considered to be forgotten and the holder may dispose of it.

Before disposing of the property, however, the holder must advise the person who entrusted it to him to fetch it within an allotted time of not less than thirty days. If the property is of considerable value, the notice shall be sent by registered or certified mail and the allotted time shall be not less than six months.

944. The holder of property entrusted but forgotten shall dispose of it by auction sale as in the case of found property, or by agreement. He may also give unsaleable property to a charitable institution or, if that is not possible, dispose of it as he sees fit.

945. The owner of lost or forgotten property may revendicate it, so long as his right of ownership has not been prescribed, by offering to pay the cost of its administration and, where applicable, the value of the work done. The holder of the property may retain it until payment.

Notwithstanding article 1707, if the property has been alienated, the owner's right is exercised, where that is the case, only against what is left of the price of sale, after deducting the cost of its administration and alienation and the value of the work done.

TITLE TWO

OWNERSHIP

CHAPTER I

NATURE AND EXTENT OF THE RIGHT OF OWNERSHIP

946. Ownership is the right to use, enjoy and dispose of property fully and freely, subject to the limits and conditions determined by law.

Ownership may be in various modes and dismemberments.

947. Ownership of property carries with it a right of accession in what is united to or incorporated with the property, from the time of union or incorporation.

948. The fruits and revenues of property belong to the owner, who bears the costs he incurred to produce them.

949. The owner of the property assumes the risks of loss.

950. Ownership of the soil carries with it ownership of what is above and what is below the surface.

The owner may make such constructions, works or plantations above or below the surface as he sees fit; he is obliged to respect, among other things, the rights of the public in mines, sheets of water and underground streams.

951. No owner may be compelled to transfer his ownership except by expropriation according to law for public utility and in consideration of a just and prior indemnity.

952. The owner of property has a right to revendicate it against the possessor or the person detaining it without right, and may object to any encroachment or to any use not authorized by him or by law.

CHAPTER II

ACCESSION

SECTION I

IMMOVABLE ACCESSION

953. Accession of movable or immovable property to an immovable may be voluntary or involuntary. Accession is artificial in the first case, natural in the second.

§ 1.—*Artificial accession*

954. Constructions, works or plantations on an immovable are presumed to have been made by the owner of the immovable at his own expense and to belong to him.

955. The owner of an immovable becomes the owner by accession of the constructions, works or plantations he has made with materials which do not belong to him, but he is required to pay the value, at the time they were incorporated, of the materials used.

The owner of the materials has no right to remove them nor any obligation to take them back.

956. The owner of an immovable acquires ownership of the constructions, works or plantations made on his immovable by a possessor, whether the disbursements were necessary, useful or for amenities.

957. The owner shall reimburse the possessor for the necessary disbursements, even if the constructions, works or plantations no longer exist.

If the possessor is in bad faith, however, compensation may be claimed for the fruits and revenues collected, after deducting the costs incurred to produce them.

958. The owner shall reimburse the useful disbursements made by a possessor in good faith, if the constructions, works or plantations still exist; he may also, if he chooses, pay him compensation equal to the increase in value.

The owner may, on the same conditions, reimburse the useful disbursements made by the possessor in bad faith; he may in that case take compensation for the fruits and revenues owed to him by the possessor.

The owner may also compel the possessor in bad faith to remove the constructions, works or plantations and to restore the place to its former condition; if such restoration is impossible, the owner may keep them without compensation or compel the possessor to remove them.

959. The owner may compel the possessor to acquire the immovable and to pay him its value if the useful disbursements made are costly and represent a considerable proportion of that value.

960. A possessor in good faith who has made disbursements for amenities for himself may, as he chooses, either remove the constructions, works or plantations he has made, without being bound to restore the place to its former condition, or abandon them.

If the possessor abandons them, the owner may either preserve them and reimburse their cost or the increase in value, whichever is less, to the possessor, or remove them at the possessor's expense.

961. The owner may compel the possessor in bad faith to remove the constructions, works or plantations he has made as amenities for himself and to restore the place to its former condition; if such restoration is impossible, he may keep them without compensation or compel the possessor to remove them.

962. A possessor in good faith has a right to retain the immovable until he has been reimbursed for necessary or useful disbursements.

A possessor in bad faith has no right under this article except in respect of necessary disbursements he has made.

963. Disbursements made by a person detaining property are dealt with according to the rules prescribed for disbursements made by a possessor in bad faith.

The person detaining the property is under no compulsion to acquire it, however.

§ 2.—*Natural accession*

964. Alluvion becomes the property of the riparian owner.

Alluvion is the deposits of earth and augmentations which are gradually and imperceptibly formed on riparian lands of a watercourse.

965. Accretions left by the imperceptible recession of running water from one bank while it encroaches upon the opposite bank are acquired by the riparian owner on the bank gradually added to, and the riparian owner on the opposite bank has no claim for the lost land.

No right exists under this article in respect of accretions from the sea, which form part of the domain of the state.

966. If, by sudden force, a watercourse carries away a large and recognizable part of a riparian land to a lower land or to the opposite bank, the owner of the part carried away may reclaim it.

The owner is obliged, on pain of forfeiture, to reclaim the part carried away within one year after the owner of the land it has attached to takes possession of it.

967. An island formed in the bed of a watercourse belongs to the owner of the bed.

968. If, in forming a new branch, a watercourse cuts a riparian land and thereby forms an island, the owner of the riparian land retains the ownership of the island so formed.

969. If a watercourse abandons its bed and forms a new bed, the former bed belongs to the owners of the newly occupied land, each in proportion to the land he has lost.

SECTION II

MOVABLE ACCESSION

970. Where movables belonging to several owners have been intermingled or united in such a way as to be no longer separable without deterioration or without excessive labour and cost, the new property belongs to the owner having contributed most to its creation by the value of the original property or by his work.

971. A person having worked on or processed material which did not belong to him acquires ownership of the new property if the work or processing is worth more than the material used.

972. The owner of the new property shall pay the value of the material or labour to the person having supplied it.

If it is impossible to determine who contributed most to the creation of the new property, the interested persons are its undivided co-owners.

973. A person bound to return a new property may retain it until its owner pays him the compensation he owes him.

974. In unforeseen circumstances, the right of accession in respect of movable property is entirely subordinate to the principles of equity.

CHAPTER III

SPECIAL RULES ON OWNERSHIP OF IMMOVABLES

SECTION I

GENERAL PROVISION

975. Neighbours shall put up with the normal neighbourhood annoyances that are not beyond the limit of tolerance they owe each other, according to the nature or location of their land or local custom.

SECTION II

LIMITS AND BOUNDARIES OF LAND

976. The limits of land are determined by the titles, the cadastral plan and the boundary lines of the land, and by any other useful indication or document, if need be.

977. Every owner may compel his neighbour to have the boundaries between their contiguous lands determined in order to fix the boundary markers, set displaced or missing boundary markers back in place, verify ancient boundary markers or rectify the dividing line between their properties.

Failing agreement between them, the owner shall first serve notice upon his neighbour to consent to having the boundaries determined and to agree upon the choice of a land surveyor to carry out the necessary operations according to the rules in the Code of Civil Procedure.

The minutes of the determination of the boundaries shall be entered in the land register.

SECTION III

WATERS

978. Lower land is subject to receiving water flowing onto it naturally from higher land.

The owner of lower land has no right to erect works to prevent the natural flow. The owner of higher land has no right to aggravate the condition of lower land, and is not presumed to do so if he carries out work to facilitate the natural run-off or, where his land is devoted to agriculture, he carries out drainage work.

979. An owner who has a spring on his land may use it and dispose of it.

He may, for his needs, use water from the lakes and ponds that are entirely on his land, taking care to preserve their quality.

980. A riparian owner may, for his needs, make use of a lake, the headwaters of a watercourse or any other watercourse bordering or crossing his land. As the water leaves his land, he shall direct it, not substantially changed in quality or quantity, into its regular course.

No riparian owner may by his use of the water prevent other riparian owners from exercising the same right.

981. Unless it is contrary to the public interest, a person having a right to use a spring, lake, sheet of water, underground stream or any running water may, to prevent the water from being polluted or dried up, require the destruction or modification of any works polluting or drying up the water.

982. Roofs are required to be built in such a manner that water, snow and ice fall on the owner's land.

SECTION IV

TREES

983. Fruit that falls from a tree onto neighbouring land belongs to the owner of the tree.

984. If branches or roots extend over or upon an owner's land from the neighbouring land and seriously obstruct its use, the owner may request his neighbour to cut them and, if he refuses, cut them himself at the expense of the owner of the tree.

If a tree on the neighbouring land is in danger of falling on the owner's land, he may compel his neighbour to fell the tree, or to right it.

985. The owner of land used for agricultural purposes may compel his neighbour to fell the trees along and not over five metres from the dividing line, if they are seriously damaging to his operations, except trees in an orchard or sugar bush and trees preserved to embellish the property.

SECTION V

ACCESS TO AND PROTECTION OF ANOTHER'S LAND

986. Every owner of land, if previously notified, shall allow his neighbour access to it if that is necessary to build, repair or maintain a construction, works or plantation on the neighbouring land.

987. Where property is carried or strays onto the land of another by the effect of a natural or superior force, the owner of that land shall allow the property to be searched for and removed, unless he immediately searches for it himself and returns it.

The property, whether object or animal, does not cease to belong to its owner unless he abandons the search, in which case it is acquired by the owner of the land unless he compels the owner of the property to remove it and to restore his land to its former condition.

988. An owner bound to give access to his land is entitled to compensation for any damage he sustains as a result of that sole fact and to the restoration of his land to its former condition.

989. The owner of land shall do any repair or demolition work needed to prevent the collapse of a construction or works situated on his land that is in danger of falling onto the neighbouring land, including a public road.

990. Where the owner of land erects a construction or works or makes a plantation on his land, he shall not disturb the neighbouring land or undermine the constructions, works or plantations situated on it.

991. Where an owner has, in good faith, built beyond the limits of his land on a parcel of land belonging to another, he shall, as the owner of the land he has encroached upon elects, acquire the parcel by paying him its value, or pay him compensation for the temporary loss of use of the parcel.

If the encroachment is a considerable one, causes serious damage or is made in bad faith, the owner of the land encroached upon may compel the builder to acquire his immovable and to pay him its value, or to remove the constructions and to restore the place to its former condition.

SECTION VI

VIEWS

992. No person may have direct views less than one hundred and fifty centimetres from the dividing line.

This rule does not apply in the case of views on the public thoroughfare or on a public park or in the case of panelled doors or doors with translucid glass.

993. The distance of one hundred and fifty centimetres is measured from the exterior facing of the wall where the opening is made and perpendicularly therefrom to the dividing line. In the case of a projecting window, the distance is measured from the exterior line.

994. A person may make unopenable translucid lights in a wall that is not a common wall, even if it is less than one hundred and fifty centimetres from the dividing line.

995. A co-owner of a common wall has no right to make any opening in it without the agreement of the other co-owner.

SECTION VII

RIGHT OF WAY

996. The owner of land enclosed by that of others in such a way that there is no access or only an inadequate, difficult or impassable access to it from the public road may, if all his neighbours refuse to grant him a servitude or another mode of access, require one of them to provide him with the necessary right of way to use and exploit his land.

Where an owner claims his right under this article, he shall pay compensation proportionate to the damage he may cause.

997. Right of way is claimed from the owner whose land affords the most natural way out, taking into consideration the condition of the place, the benefit to the enclosed land and the inconvenience caused by the right of way to the land on which it is exercised.

998. If land is enclosed as a result of the division of land pursuant to a partition, will or contract, right of way may be claimed only from a co-partitioner, heir or contracting party, not from the owner whose land affords the most natural way out, and in this case the way is provided without compensation.

999. The beneficiary of a right of way shall build and maintain all the works necessary to ensure that his right is exercised under conditions that cause the least possible damage to the land on which it is exercised.

1000. Right of way is extinguished when it ceases to be necessary for the use and exploitation of the land. The compensation is not reimbursed, but if it was payable as an annual rent or by instalments, future payments of these are no longer due.

SECTION VIII

COMMON FENCES AND WORKS

1001. Any owner of land may fence it, at his own expense, with walls, ditches, hedges or any other kind of fence.

He may also require his neighbour to build or make one-half of or share the cost of building or making a fence on the dividing line to divide his land from his neighbour's land.

1002. A fence on the dividing line is presumed to be common. Similarly, a wall supporting buildings on either side is presumed to be common up to the point of disjunction.

1003. Any owner may cause a private wall adjacent to the dividing line to be rendered common by reimbursing the owner of the wall for one-half of the cost of the section rendered common and, where applicable, one-half of the value of the ground used.

1004. Each owner may build against a common wall and set beams and joists against it. He shall obtain the concurrence of the other owner on how to proceed.

In case of disagreement, the owner may apply to the court to determine the means necessary to ensure that the new works infringe the rights of the other owner as little as possible.

1005. The maintenance, repair and rebuilding of a common wall are at the expense of each owner in proportion to his right.

An owner who does not use the common wall may renounce his right and thereby be relieved of his obligation to share the expenses by producing a notice to that effect at the publication of rights office and transmitting a copy of the notice to the other owners without delay. The notice entails renunciation of the right to make use of the wall.

1006. A co-owner of a common wall has a right to heighten it at his own expense after ascertaining by means of an expert appraisal that it can withstand it, and shall pay one-sixth of the cost of the heightening to the other as compensation.

If the wall cannot withstand heightening, the owner is required to rebuild the entire wall at his own expense, any excess thickness going on his own side.

1007. The heightened part of the wall belongs to the person who made it, and the cost of its maintenance, repair and rebuilding is his responsibility.

The neighbour who did not contribute to the heightening may nevertheless acquire common ownership of it by paying one-half of the cost of the heightening or rebuilding and, where applicable, one-half of the value of the ground provided for excess thickness. He shall also repay any compensation he has received.

TITLE THREE

SPECIAL MODES OF OWNERSHIP

CHAPTER I

GENERAL PROVISIONS

1008. Ownership has two principal special modes, co-ownership and superficies.

1009. Co-ownership is called undivided where several persons jointly have a right of ownership in a property while the property is not physically partitioned among them.

Co-ownership is called divided where, while certain parts of the property are physically divided, the right of ownership is apportioned among the co-owners in fractions, each comprising a private portion and a share of the common portions.

CHAPTER II

UNDIVIDED CO-OWNERSHIP

SECTION I

ESTABLISHMENT OF INDIVISION

1010. Indivision may arise from a contract, succession or judgment or by operation of law.

1011. An indivision agreement that postpones partition of a property shall be set down in writing.

It cannot exceed thirty years, but is renewable. An agreement exceeding thirty years is reduced to that term.

1012. An indivision agreement regarding an immovable may be set up against third persons only if it is entered in the land register. It may be set up against the legal representatives of the undivided owners from the time it is entered.

SECTION II

RIGHTS AND OBLIGATIONS OF UNDIVIDED CO-OWNERS

1013. The shares of undivided co-owners are presumed equal.

Each undivided co-owner has the rights and obligations of an exclusive owner as regards his share. Thus, each may alienate or hypothecate his share and his creditors may seize it.

1014. Each undivided co-owner may make use of the undivided property provided he does not affect its destination or the rights of the other co-owners.

If one of the co-owners has exclusive use and enjoyment of the property, he is liable for compensation.

1015. The fruits and revenues of the undivided property accrue to the indivision. Each undivided co-owner is entitled to his share each year, but any share unclaimed for three years from its due date accrues to the indivision.

1016. The undivided co-owners are liable proportionately to their shares for the costs of administration and the other common charges related to the undivided property.

1017. Each undivided co-owner is entitled to be reimbursed for necessary disbursements he has made to conserve the undivided property. For other disbursements, he is entitled, at partition, to compensation equal to the increase in value given to the property.

Conversely, each undivided co-owner is accountable for any loss which by his doing decreases the value of the undivided property.

1018. Each undivided co-owner has a right of accession to property joined or incorporated with the portion of the undivided property of which he has exclusive use and enjoyment. If none of the undivided co-owners so uses or enjoys a portion of the property, the right of accession operates to the benefit of all the co-owners proportionately to their shares in the indivision.

1019. In case of an indivision agreement, partition cannot be set up against a creditor holding a hypothec on an undivided portion of the property, unless he has consented to the partition.

1020. Any undivided co-owner, within sixty days of learning that a third person has, by onerous title, acquired the share of an undivided co-owner, may exclude him from the indivision by reimbursing him for the transfer price and the expenses he has paid.

This right must be exercised within one year of the acquisition of the share.

1021. An undivided co-owner having caused his address to be registered at the publication of rights office may, within sixty days of being notified of the intention of a creditor to sell the share of an undivided co-owner or to take it in payment of an obligation, be subrogated to the rights of the creditor by paying him the debt of the undivided co-owner, with costs.

An undivided co-owner not having caused his address to be registered has no right of redemption against a creditor or the successors of the creditor.

1022. If several undivided co-owners exercise their rights of redemption or subrogation against the share of an undivided co-owner, it is partitioned among them proportionately to their rights in the undivided property.

SECTION III

ADMINISTRATION OF UNDIVIDED PROPERTY

1023. Undivided co-owners of property shall administer it jointly.

1024. Administrative decisions shall be taken by a majority in number and shares of the undivided co-owners.

Decisions in view of alienating or partitioning the undivided property, charging it with a real right, changing its destination or making substantial alterations to it require unanimous approval.

1025. The undivided co-owners may appoint one of their number or another person as manager and entrust him with the administration of the undivided property.

The court may designate the manager on the motion of one of the undivided co-owners and determine his responsibilities where a majority in number and shares of the undivided co-owners cannot agree on whom to appoint, or where it is impossible to appoint or replace the manager.

1026. Where one of the undivided co-owners administers the undivided property with the knowledge of the others and without objection on their part, he is presumed to have been appointed manager.

1027. The manager shall act alone with respect to the undivided property as administrator of the property of others charged with simple administration.

SECTION IV

END OF INDIVISION AND PARTITION

1028. No one is bound to remain in indivision; partition may be demanded at any time unless it has been postponed by agreement, a testamentary disposition, a judgment, or operation of law, or unless it has become impossible because the property has been appropriated to a durable purpose.

1029. Notwithstanding any agreement to the contrary, a majority of the undivided co-owners representing at least three-quarters of the shares may terminate the undivided co-ownership of a mainly residential immovable in order to establish divided co-ownership of it.

The undivided co-owners may satisfy those who object to the establishment of divided co-ownership and who refuse to sign the declaration of co-ownership by apportioning their share to them in money; the share of each undivided co-owner is then increased in proportion to his payment.

1030. On a motion by an undivided co-owner, the court, to avoid a loss, may postpone the partition of the whole or part of the property and continue the indivision for not over two years.

A decision under the first paragraph may be revised if the causes shown for continuing the indivision have ceased to exist or if the indivision has become intolerable or highly riskful for the undivided co-owners.

1031. If one of the undivided co-owners objects to continuing in indivision, the others may satisfy him at any time by apportioning his share to him in kind, provided it is easily detachable from the rest of the undivided property, or in money, as he chooses.

If the share is apportioned in kind, the undivided co-owners may make the allotment least prejudicial to the exercise of their rights.

If the share is apportioned in money, the share of each undivided co-owner is increased in proportion to his payment.

1032. If the undivided co-owners fail to agree on the share in kind or in money to be apportioned to one of them, an expert appraisal or a valuation shall be made by a person designated by all the undivided co-owners or, if they cannot agree among themselves, by the court.

1033. Creditors who had rights in the undivided property before it became undivided and creditors whose claims arise from its administration are paid out of the assets before partition. They may, in addition, seize and sell the undivided property.

No creditor, not even a preferred or hypothecary creditor, of an undivided co-owner may demand partition, except by an action in subrogation where the undivided co-owner could demand it himself. A creditor may, however, seize and sell his debtor's share.

1034. Indivision may be terminated by the decision of a majority in number and shares of the undivided co-owners where a large part of the undivided property is lost or expropriated.

1035. Indivision ends by the partition or alienation of the property.

In the case of partition, the provisions relating to the partition of successions apply, adapted as required.

CHAPTER III

DIVIDED CO-OWNERSHIP OF IMMOVABLES

SECTION I

ESTABLISHMENT OF DIVIDED CO-OWNERSHIP

1036. Divided co-ownership of an immovable is established by publication of a declaration under which ownership of the immovable is divided into fractions belonging to one or several persons.

1037. Upon the publication of the declaration of co-ownership, the co-owners as a body constitute a legal person, the objects of which are to preserve the immovable, to maintain and manage the common portions, to protect the rights appurtenant to the immovable or the co-ownership and to take all measures of common interest.

The legal person shall be called a syndicate.

1038. Divided co-ownership may be established of an immovable that is built by an emphyteutic lessee or that is subject to superficies if the unexpired term of the lease or right, at the time of publication of the declaration, is over fifty years.

In cases arising under the first paragraph, each co-owner, dividedly and proportionately to the relative value of his fraction, is liable for the divisible obligations of the emphyteutic lessee or superficiary, as the case may be, towards the owner of the immovable subject to emphyteusis or superficies. The syndicate assumes the indivisible obligations.

SECTION II

FRACTIONS OF CO-OWNERSHIP

1039. The relative value of each of the fractions of a divided co-ownership with reference to the value of all the fractions together is determined in consideration of the nature, destination, dimensions and location of the private portion of each fraction, but not of its use.

The relative value is determined in the declaration.

1040. Those portions of the buildings and land that are the property of a specific co-owner and that are for his use alone are called the private portions.

1041. Those portions of the buildings and land that are owned by all the co-owners and serve for their common use are called the common portions.

Some of these portions may nevertheless serve for the use of only one or several of the co-owners. The rules regarding the common portions apply to these common portions for restricted use.

1042. The following are presumed to be common portions: the ground, yards, verandas or balconies, parks and gardens, access ways, stairways and elevators, passageways and halls, common service areas, parking and storage areas, basements, foundations and main walls of buildings, and common equipment and apparatus, such as the central heating and air-conditioning systems and the piping and wiring, including what crosses private portions.

1043. Partitions or walls that are not part of the foundations and main walls of a building but which separate a private portion from a common portion or from another private portion are presumed common.

1044. Each co-owner has an undivided right of ownership in the common portions. His share of the common portions is proportionate to the relative value of his fraction.

1045. Each fraction constitutes a distinct entity and may be alienated in whole or in part; the alienation includes, in each case, the share of the common portions appurtenant to the fraction or the part of the fraction alienated, as well as the right to use the common portions for restricted use, where applicable.

1046. The shares of a fraction in the common portions cannot, separately from the private portion of the fraction, be the object of alienation or an action in partition.

1047. Alienation of a divided part of a fraction is null and cannot be published unless the declaration of co-ownership and the cadastral plan have been altered prior to the alienation so as to create a new fraction, describe it, give it a separate cadastral number and determine its relative value, or to record the alterations made to the boundaries between contiguous private portions.

1048. Each fraction forms a distinct entity for the purposes of real estate assessment and taxation.

The syndicate shall be impleaded in the case of any judicial contestation of the assessment of a fraction by a co-owner.

1049. Notwithstanding articles 2636 and 2646, a hypothec, any additional security accessory thereto or any preferences existing at the time of entry of the declaration of co-ownership on the whole of an immovable held in co-ownership are divided among the fractions according to the relative value of each or according to any other established proportion.

They may remain undivided, however, with regard to the group of fractions held by the promoter of the co-ownership.

SECTION III

DECLARATION OF CO-OWNERSHIP

§ 1.—*Content of declaration*

1050. A declaration of co-ownership comprises the act constituting the co-ownership, the by-laws of the immovable and a description of the fractions.

1051. An act of co-ownership shall define the destination of the immovable, of the exclusive parts and of the common parts.

The act shall also determine the relative value of each fraction, indicating how that value was determined, the share of the expenses and the number of votes attached to each fraction and shall provide any other agreement regarding the immovable or its private or common portions. It shall also specify the powers and duties of the board of directors of the syndicate and of the general meeting of the co-owners.

1052. The by-laws of an immovable shall contain the rules on the enjoyment, use and upkeep of the private and common portions, and those on the operation and administration of the co-ownership.

The by-laws shall also deal with the procedure of assessment and collection of contributions to the common expenses.

1053. A description shall contain the cadastral description of the private portions and common portions of the immovable.

A description shall also contain a description of the real rights affecting or existing in favour of the immovable other than hypothecs, additional security accessory thereto and preferences.

1054. No declaration of co-ownership may impose any restriction on the rights of the co-owners except restrictions justified by the destination, characteristics or location of the immovable.

Stipulations prohibiting the alienation of a divided part of a fraction or making the carrying out of work that may have an impact on the common portions subject to approval by the syndicate are authorized if they are justified according to the first paragraph.

1055. The by-laws of the immovable may be set up against the lessee or occupant of a fraction upon his being given a copy of the by-laws or the amendments to them by the co-owner or, if not by him, by the syndicate.

1056. Unless express provision is made therefor in the declaration of co-ownership, no fraction may be held by several persons each having a right of enjoyment periodically and successively in the fraction, nor may a fraction be alienated for that purpose.

Where the declaration makes provision for periodical and successive right of enjoyment by holders, it shall indicate the number

of fractions that may be held in this way, the occupancy periods, the maximum number of persons who may hold these fractions, and the rights and obligations of these occupants.

§ 2.—*Entry of declaration*

1057. A declaration of co-ownership, and any amendments made to the act of co-ownership or the description of the fractions, shall be in the form of a notarial act *en minute*.

The declaration shall be signed by all the owners of the immovable and by the emphyteutic lessee or the superficiary, if any; amendments shall be signed by the syndicate.

1058. The declaration and any amendments made to the act of co-ownership or the description of the fractions shall be presented at the publication of rights office. The declaration shall be entered in the land register under the registration numbers of the common portions and the private portions. The amendments shall be entered under the registration number of the common portions only, unless they directly affect a private portion. However, it is sufficient for amendments made to the by-laws of the immovable to be filed with the syndicate.

Where applicable, the emphyteutic lessee or superficiary shall give notice of the entry to the owner of an immovable under emphyteusis or on which superficies has been established.

1059. The entry of an act against a private portion is valid against the share of the common portions attached to it, without any requirement to make an entry under the registration number of the common portions.

1060. A declaration of co-ownership may be set up against the co-owners and their successors and against the persons who signed it from the time of its entry.

Unless, at the time it is presented at the publication of rights office, it is accompanied with the written consent of all the holders of hypothecs on the immovable, it cannot be set up against them.

SECTION IV

RIGHTS AND OBLIGATIONS OF CO-OWNERS

1061. Each co-owner has the disposal of his fraction; he has free use and enjoyment of his private portion and of the common portions,

provided he observes the by-laws of the immovable and does not impair the rights of the other co-owners or the destination of the immovable.

1062. Each co-owner shall contribute in proportion to the relative value of his fraction to the expenses arising from the co-ownership and from the operation of the immovable and the contingency fund established under article 1069, although only the co-owners who use common portions for restricted use shall contribute to the costs resulting from those portions.

1063. A co-owner who gives a lease on his fraction shall notify the syndicate and give the name of the lessee.

1064. No co-owner may interfere with the carrying out, even inside his private portion, of work required for the conservation of the immovable decided upon by the syndicate or of urgent work.

Where a fraction is leased, the syndicate shall give the lessee, where applicable, the notices prescribed in articles 1909 and 1918 regarding improvements and work.

1065. A co-owner who suffers prejudice by the carrying out of work, through a permanent diminution in the value of his fraction, a grave disturbance of enjoyment, even if temporary, or through deterioration, is entitled to obtain compensation from the syndicate if the syndicate ordered the work or, if it did not, from the co-owners who did the work.

1066. Every co-owner may, within five years from the day of entry of the declaration of co-ownership, apply to the court for a revision, for the future, of the relative value of the fractions and of the apportionment of the common expenses.

The right to apply for a revision may be exercised only if there exists, between the relative value attributed to a fraction or the share of common expenses attached thereto and the value or share that should have been determined, according to the criteria provided in the declaration of co-ownership, a difference in excess of one-tenth either in favour of another co-owner or to the prejudice of the applicant co-owner.

1067. The buyer of a fraction of an immovable under divided co-ownership may request from the syndicate of co-owners a statement of the common expenses due by the selling co-owner. He cannot be bound to pay the expenses if he does not receive the statement within ten days from his request.

The statement given to the buyer shall be adjusted to the last annual budget of the co-owners.

SECTION V

RIGHTS AND OBLIGATIONS OF THE SYNDICATE

1068. The syndicate shall keep a register at the disposal of the co-owners containing the name and address of each co-owner and each lessee, the minutes of the meetings of the co-owners and of the board of directors and the financial statements.

It shall also keep at their disposal the declaration of co-ownership, the copies of the contracts to which it is a party, a copy of the cadastral plan, the plans and specifications of the immovable built and all other documents relating to the immovable and the syndicate.

1069. The syndicate shall, according to the estimated cost of major repairs and the cost of replacement of common portions, establish a contingency fund to provide cash funds on a short-term basis allocated exclusively to such repairs and replacement. The syndicate shall be the owner of the fund.

1070. Each year, the board of directors, after consultation with the general meeting of the co-owners, shall determine their contribution to the contingency fund. It shall, where applicable, take into account the rights of any co-owner in the common portions for restricted use.

It shall similarly fix the contribution for common expenses, after determining the amount of the sums required to meet the expenses arising from the co-ownership and the operation of the immovable.

The syndicate shall, without delay, notify each co-owner of the amount of his contribution and the date when it is payable.

1071. The syndicate has an insurable interest in the whole immovable, including the private portions. It shall take out insurance against ordinary risks, such as fire and theft, on the whole of the immovable, except improvements made by a co-owner to his part. The amount insured shall be equal to the replacement cost of the immovable.

The syndicate shall also take out third person liability insurance.

1072. Non-observance of a condition of the insurance contract by a co-owner cannot be set up against the syndicate.

1073. The indemnity owing to the syndicate following a large loss is, notwithstanding article 2479, paid to the trustee appointed in the act of co-ownership or, where none has been appointed, designated by the syndicate.

The indemnity shall be used to repair or rebuild the immovable, unless the syndicate decides to terminate the co-ownership, in which case the trustee, after determining the share of the indemnity of each of the co-owners according to the relative value of his fraction, shall, out of that share, pay the preferred and hypothecary creditors according to the rules in article 2479. He shall, for each of the co-owners, remit the balance of the indemnity to the liquidator of the syndicate with his report.

1074. The syndicate may, if authorized to do so, acquire or alienate fractions, common portions or other real rights.

A private portion does not cease to be private by the fact that the fraction is acquired by the syndicate, but the syndicate has no vote for that portion at the general meeting and the total number of votes that may be given is reduced accordingly.

1075. The syndicate is responsible for damage caused to the co-owners or third persons by faulty design, structural defects or lack of maintenance of the common portions, without prejudice to any other remedy.

1076. A judgment condemning the syndicate to pay a sum of money is executory against the syndicate and against each of the persons who were co-owners at the time the cause of action arose, proportionately to the relative value of his fraction.

The judgment shall not be executed against the contingency fund, except for a debt arising from the repair of the immovable or the replacement of common portions.

1077. The syndicate may demand the resiliation of the lease of a fraction, after notifying the lessor and the lessee, where the non-performance of an obligation by the lessee causes serious prejudice to a co-owner or to another occupant of the immovable.

1078. Where the refusal of a co-owner to comply with the declaration of co-ownership causes serious and irreparable prejudice to the syndicate or to one of the co-owners, either of them may apply to the court for an injunction to the co-owner to comply with the declaration.

If the co-owner violates the injunction or refuses to obey it, the court may, in addition to the other penalties it may impose, order the sale of the co-owner's fraction, after appointing a person to proceed with the sale and fixing the upset price.

1079. The syndicate may institute any action on the grounds of latent defects, faulty design or structural defects of the immovable or defects in the ground. In a case where the faults or defects affect the private portions, the syndicate cannot proceed until it has obtained the authorization of the co-owners of those portions.

Where the defendant sets up the failure to act with diligence against an action grounded on a latent defect, such diligence is appraised in respect of the syndicate or of a co-owner from the day of the election of a new board of directors, after the promoter loses control of the syndicate.

1080. The syndicate, within six months of learning that a person has acquired the rights of the owner of an immovable that is under emphyteusis or superficies, may acquire the rights of that person by reimbursing him for the price of transfer and the costs he has paid.

Where the syndicate exercises its right of redemption, the rights it acquires from the owner become common or private portions, as the case may be.

1081. The syndicate may join an association of co-ownership syndicates formed for the creation, administration and upkeep of common services for several immovables held in co-ownership, or for the pursuit of common interests.

SECTION VI

BOARD OF DIRECTORS OF THE SYNDICATE

1082. The composition of the board of directors of the syndicate, the mode of appointment, replacement and remuneration of the directors and their other conditions of office are fixed by by-law of the immovable.

The court, on the motion of a co-owner, may appoint or replace a director and fix his conditions of office if there is no provision therefor in the by-laws or if it is impossible to proceed in the prescribed manner.

1083. The day-to-day administration of the syndicate may be entrusted to a manager chosen from among the co-owners or otherwise.

The manager shall act as the administrator of the property of others charged with simple administration.

1084. A director or the manager may be replaced by the syndicate if, being a co-owner, he neglects to pay his contribution to the common expenses or to the contingency fund.

SECTION VII

THE GENERAL MEETING OF THE CO-OWNERS

1085. The notice calling the annual general meeting of the co-owners shall be accompanied with, in addition to the balance sheet, with the statement of the results for the preceding financial period, the statement of debts and claims, the budget forecast, any draft amendment to the declaration of co-ownership and a note on the general terms and conditions of any proposed contract or planned work.

1086. Within five days of receiving notice of a general meeting of the co-owners, any co-owner may cause a question to be placed on the agenda.

The board of directors shall give written notice of the questions newly placed on the agenda to the co-owners before the meeting.

1087. Co-owners holding a majority of the votes constitute a quorum at general meetings.

If a quorum is not reached, the meeting shall be declared adjourned to a later date, notice of which shall be given to all the co-owners; three-quarters of the members present or represented at the second meeting constitute a quorum.

A meeting at which there is no longer a quorum must be adjourned if a co-owner requests it.

1088. Each co-owner is entitled to a number of votes at a general meeting proportionate to the relative value of his fraction. The undivided co-owners of a fraction shall vote in proportion to their undivided shares.

1089. Where, in a co-ownership comprising fewer than five fractions, a co-owner is entitled to more than one-half of all the votes available to the co-owners, the number of votes to which he is entitled at a meeting is reduced to the total number of votes to which the other co-owners present or represented at the meeting are entitled.

1090. No promoter of a co-ownership comprising five or more fractions is entitled, in addition to the voting rights attached to the fraction serving as his residence, to over sixty per cent of all the votes of the co-owners at the end of the second and third years after the date of entry of the declaration of co-ownership.

The limit is subsequently reduced to twenty-five per cent.

1091. Any person who, at the time of entry of a declaration of co-ownership, owns at least one-half of all the fractions, or his successors, other than a person who in good faith acquires a fraction for a price equal to its market value with the intention of inhabiting it, is considered to be a promoter.

1092. Where a co-owner defaults payment of his share of the common expenses or his contribution to the contingency fund, the syndicate may obtain a court order depriving him of voting rights.

1093. No assignment of the voting rights of a co-owner which has not been notified in writing to the syndicate may be set up against it.

1094. Decisions of the syndicate, including a decision to correct a clerical error in the declaration of co-ownership, are taken by a majority of the co-owners present or represented at the meeting.

1095. Decisions respecting the following matters require a majority vote of the co-owners representing three-quarters of the voting rights of all the co-owners:

(1) Acts of acquisition or alienation of immovables by the syndicate;

(2) Work for the alteration, enlargement or improvement of the common portions, and the apportionment of its cost;

(3) The amendment of the declaration of co-ownership or of the description of the fractions.

1096. Decisions of the following nature require a majority vote of the co-owners representing ninety per cent of the voting rights of all the co-owners:

(1) To change the destination of the immovable;

(2) To authorize the alienation of common portions the retention of which is necessary to the destination of the immovable;

(3) To authorize the construction of buildings for the creation of new fractions;

(4) To amend the declaration of co-ownership in order to permit the holding of a fraction by several persons having a right of periodical and successive enjoyment.

1097. Where the number of votes available to a co-owner or a promoter is reduced by the effect of this section, the total number of votes that may be cast by all the co-owners to decide a question requiring a majority in number and votes is reduced by the same number.

1098. The co-owners of contiguous private portions may alter the boundaries between their exclusive parts without obtaining the approval of the general meeting provided they obtain the consent of their hypothecary creditors and of the syndicate. No alteration may increase or decrease the relative value of the group of private portions altered or the total of the voting rights attached to them.

The syndicate shall amend the declaration of co-ownership and the cadastral plan at the expense of the co-owners contemplated in the first paragraph; the act of amendment shall be accompanied with the consent of the creditors, the co-owners and the syndicate.

1099. Any stipulation of the declaration of co-ownership which changes the number of votes required in this chapter for taking any decision is null.

1100. Any decision of the syndicate which, contrary to the declaration of co-ownership, imposes on a co-owner a change in the relative value of his fraction, a change of destination of his private portion or a change in the use he may make of it is null.

1101. Any co-owner may apply to the court to nullify a decision of the general meeting if the decision is partial, if it was taken with intent to injure the co-owners or in contempt of rights, or if an error was made in counting the votes.

The action is forfeited unless instituted within sixty days after the meeting.

If the action is futile or vexatious, the court may condemn the plaintiff to pay damages.

SECTION VIII

LOSS OF CONTROL OF SYNDICATE BY THE PROMOTER

1102. Within ninety days from the day on which the promoter of a co-ownership ceases to hold a majority of voting rights in the general meeting of the co-owners, the board of directors shall call a special meeting of the co-owners to elect a new board of directors.

If the meeting is not called within ninety days, any co-owner may call it.

1103. The board of directors shall render account of its administration at the special meeting.

It shall produce the financial statements, which shall be accompanied with remarks by an accountant on the financial situation of the syndicate. The accountant shall, in his report to the co-owners, indicate any irregularity that has come to his attention.

The financial statements shall be audited on the application of co-owners representing forty per cent of the voting rights of all the co-owners. The application may be made at any time, even before the meeting.

1104. The accountant has a right of access at all times to the books, accounts and vouchers concerning the co-ownership.

He may require the promoter or an administrator to give him any information or explanation necessary for the performance of his duties.

1105. The new board of directors may, within sixty days of the election, terminate, without penalty, a contract for the maintenance of the immovable or for other services entered into before the election by the syndicate, where the term of the contract exceeds one year.

SECTION IX

TERMINATION OF CO-OWNERSHIP

1106. Co-ownership of an immovable may be terminated by a decision of a majority of two-thirds of the co-owners representing ninety per cent of the voting rights of all the co-owners.

The decision to terminate the co-ownership shall be recorded in writing and signed by the syndicate and the persons holding hypothecs on the immovable or part thereof. This decision shall be entered in the land register under the registration numbers of the common portions and private portions.

1107. The syndicate is liquidated according to the rules of Book One on the liquidation of legal persons.

For that purpose, the liquidator is seized of the immovable and of all the rights and obligations of the co-owners in the immovable, in addition to the property of the syndicate.

CHAPTER IV

SUPERFICIES

SECTION I

NATURE OF SUPERFICIES

1108. Superficies is a real immovable right which enables a person, the superficiary, to own constructions, works or plantations situated on an immovable belonging to another person, the owner of the subsoil.

It results from division of the object of the right of ownership, transfer of the right of accession or renunciation of the benefit of accession.

1109. The right of the superficiary to use the subsoil is governed by an agreement. Failing agreement, the subsoil is charged with the servitudes necessary for the exercise of the right. These servitudes are extinguished upon termination of the right.

1110. The superficiary and the owner of the subsoil each bear the charges encumbering what constitutes the object of their respective rights of ownership.

1111. Superficies established by way of a construction lease enables the lessee, with the permission of the lessor, to make constructions, works or plantations and be recognized as their owner.

The superficiary may transfer or sub-let his rights under the lease. He may also, acting alone, charge the leased immovable with useful servitudes, even in favour of third persons. These servitudes are extinguished upon termination of the right.

1112. Superficies may be perpetual; where it is established by a construction lease, it shall not exceed one hundred years, even if the lease stipulates a longer term.

A construction lease cannot be renewed tacitly beyond one hundred years.

SECTION II

TERMINATION OF SUPERFICIES

1113. Superficies is terminated

(1) By the union of the qualities of subsoil owner and superficiary in the same person, subject to the rights of third persons;

(2) By the fulfilment of a resolutive condition;

(3) By the expiry of the term.

1114. Superficies is not terminated by the total loss or expropriation of the constructions, works or plantations or by their expropriation or the expropriation of the subsoil.

1115. At the termination of superficies, the subsoil owner acquires ownership of the constructions, works or plantations by paying their value to the superficiary, if they are of smaller value than the subsoil.

If the constructions, works or plantations are equal in value to the subsoil or of greater value, the superficiary has a right to acquire ownership of the subsoil by paying its value to the subsoil owner, unless he prefers to remove, at his own expense, the constructions, works and plantations he has made and return the subsoil to its former condition.

1116. Where the superficiary fails to exercise his right to acquire ownership of the subsoil within ninety days from the end of

the superficies, the owner of the subsoil becomes the owner by accession of the constructions, works and plantations.

1117. A subsoil owner and a superficiary who do not agree on the price and other terms and conditions of acquisition of the subsoil or of the constructions, works or plantations may apply to the court to fix the price and the terms and conditions of acquisition. The judgment is a valid title and has all the effects thereof.

They may also, if they fail to agree on the terms and conditions of removal of the constructions, works or plantations, apply to the court to fix them.

TITLE FOUR

DISMEMBERMENTS OF THE RIGHT OF OWNERSHIP

GENERAL PROVISION

1118. Usufruct, use, servitude and emphyteusis are dismemberments of the right of ownership and are real rights.

CHAPTER I

USUFRUCT

SECTION I

NATURE OF USUFRUCT

1119. Usufruct is the right of use and enjoyment, for a certain time, of property owned by another as one's own, subject to the obligation of preserving its substance.

1120. Usufruct is established by contract, by will or by law; it may also be established by judgment in the cases prescribed by law.

1121. Usufruct may be established for the benefit of one or several usufructuaries jointly or successively.

The usufructuaries shall exist when the usufruct opens.

1122. No usufruct may last longer than one hundred years even if the deed granting it provides a longer term or creates a successive usufruct.

Usufruct granted without a term is granted for life or, if the usufructuary is a legal person, for thirty years.

SECTION II

RIGHTS OF THE USUFRUCTUARY

§ 1.—*Scope of usufruct*

1123. The usufructuary has the use and enjoyment of the property subject to usufruct; he takes the property in the condition in which he finds it.

Usufruct also bears on all accessories and on everything that is naturally united to or incorporated with the immovable by accession.

1124. The usufructuary may require the bare owner to cease any act which prevents him from fully exercising his right.

The bare owner's alienation of his right does not affect the right of the usufructuary.

1125. The usufructuary appropriates the fruits and revenues produced by the property.

1126. The usufructuary owns all the property under his usufruct which cannot be used without being consumed, subject to the obligation of returning similar property in the same quantity and of the same quality at the end of the usufruct.

Where the usufructuary is unable to return similar property he shall pay the value thereof in cash.

1127. The usufructuary may dispose, as a prudent and diligent administrator, of property which, though not consumable, rapidly deteriorates with use.

In the case described in the first paragraph, the usufructuary shall, at the end of the usufruct, return the value of the property at the time he disposed of it.

1128. The usufructuary is entitled to the fruits attached to the property at the beginning of the usufruct. He has no right to the fruits still attached to it at the time his usufruct ceases.

Compensation is due by the bare owner or by the usufructuary, as the case may be, to the person who has done or incurred the necessary work or expenses for the production of the fruits.

1129. Revenues are counted, between the usufructuary and the bare owner, day by day. They belong to the usufructuary from the day his right begins to the day it terminates, regardless of when they are exigible or paid, except dividends, which belong to the usufructuary only if they are declared during the usufruct.

1130. Extraordinary income derived from ownership of the property under usufruct, such as premiums granted upon the redemption of securities, are paid to the usufructuary, who is accountable for them to the bare owner at the end of the usufruct.

1131. If a debt subject to a usufruct becomes payable during the usufruct, the price is paid to the usufructuary, who shall give a discharge for it.

The usufructuary is accountable for the debt to the bare owner at the end of the usufruct.

1132. The right to increase the capital subject to the usufruct, such as the right to subscribe for securities, belongs to the bare owner, but the right of the usufructuary extends to the increase.

Where the bare owner elects to alienate his right, the proceeds of the alienation are remitted to the usufructuary, who is accountable for it at the end of the usufruct.

1133. Voting rights attached to shares or to other securities, to an undivided share, to a fraction of a property held in co-ownership or to any other property belong to the usufructuary.

However, any vote having the effect of altering the substance of the principal property, such as the capital stock or property held in co-ownership, or of changing the destination of the property or terminating the legal person, enterprise or group concerned belongs to the bare owner.

The distribution of the exercise of the voting rights cannot be set up against third persons; it is discussed only between the usufructuary and the bare owner.

1134. The usufructuary may transfer his right or lease a property included in the usufruct.

1135. A creditor of the usufructuary may cause the rights of the usufructuary to be seized and sold, subject to the rights of the bare owner.

A creditor of the bare owner may also cause the rights of the bare owner to be seized and sold, subject to the rights of the usufructuary.

§ 2.—*Disbursements*

1136. Necessary disbursements made by the usufructuary are treated, in relation to the bare owner, as those made by a possessor in good faith. The same rule applies to useful disbursements.

§ 3.—*Trees and minerals*

1137. In no case may the usufructuary fell trees growing on the land subject to the usufruct except for repairs, maintenance or exploitation of the land. He may, however, dispose of those which have fallen or died naturally.

The usufructuary shall replace the trees that have been destroyed, in conformity with the usage of the place or the custom of the owners. He shall replace orchard and sugar bush trees, unless most of them have been destroyed.

1138. The usufructuary may begin agricultural or sylvicultural operations if the land subject to the usufruct is suitable therefor.

Where the usufructuary begins or continues operations, he shall do so in such a manner as not to exhaust the soil or prevent the regrowth of the forest. He shall also, in the case of sylvicultural operations, have his operating plan approved by the bare owner before his operations begin. If he fails to obtain such approval, he may have the plan approved by the court.

1139. No usufructuary may extract minerals from the land subject to the usufruct except for the repair and maintenance of the land.

However, where the extraction of minerals constituted a source of income for the owner before the opening of the usufruct, the usufructuary may continue the extraction in the same way as it was begun.

SECTION III

OBLIGATIONS OF THE USUFRUCTUARY

§ 1.—*Inventory and security*

1140. The usufructuary, in the manner of an administrator of the property of others, shall make an inventory of the property subject to his right unless the creator of the usufruct has done so himself or has exempted him from doing so. No exemption may be granted if the usufruct is successive.

The usufructuary shall make the inventory at his own expense and shall furnish a copy to the bare owner.

1141. In no case may the usufructuary compel the creator of the usufruct or the bare owner to deliver the property to him until he has made an inventory.

1142. Except in the case of a vendor or donor who has reserved the usufruct, the usufructuary shall, within sixty days from the opening of the usufruct, take out insurance or furnish other security to the bare owner to guarantee performance of his obligations. The usufructuary shall furnish additional security if his obligations increase while the usufruct lasts.

The usufructuary is exempted from these obligations if he is unable to perform them or if the creator of the usufruct so provides.

1143. If the usufructuary fails to furnish security within the allotted time, the bare owner may have the property sequestered.

The sequestrator, in the manner of an administrator of the property of others charged with simple administration, shall invest the amounts included in the usufruct and the proceeds of the sale of perishable property. He shall similarly invest the amounts deriving from payment of the claims subject to the usufruct.

1144. Any delay by the usufructuary in making an inventory of the property or furnishing security deprives him of his right to the fruits and revenues from the opening of the usufruct until the performance of his obligations.

1145. The usufructuary may apply to the court for leave to retain sequestered movables necessary for his use under no other condition than that he undertake to produce them at the end of the usufruct.

§ 2.—*Insurance and repairs*

1146. The usufructuary is required to insure the property against ordinary risks such as fire and theft and to pay the insurance premiums while the usufruct lasts. He is, however, exempted from that obligation where the insurance premium is too high in relation to the risks.

1147. In the case of a loss, the indemnity is paid to the usufructuary, who shall give discharge therefor to the insurer.

The usufructuary shall use the indemnity for the repair of the property, except in the case of total loss, where he may have enjoyment of the indemnity.

1148. The usufructuary or the bare owner may take out insurance on his own account to secure his rights.

The indemnity belongs to the usufructuary or the bare owner, as the case may be.

1149. Maintenance of the property is the responsibility of the usufructuary. He is not required to make major repairs except where they are necessary as the result of his act, in particular his failure to carry out maintenance repairs since the opening of the usufruct.

1150. Major repairs are those which affect a substantial part of the property and require extraordinary outlays, such as repairs relating to beams and support walls, to the replacement of roofs, to prop-walls or to heating, electrical, plumbing or electronic systems, and, in respect of movables, to motive parts or the casing of the property.

1151. The usufructuary shall notify the bare owner that major repairs are necessary.

The bare owner is under no obligation to make the major repairs. If he makes them, the usufructuary shall put up with the resulting inconvenience. If he does not make them, the usufructuary may make them and be reimbursed for the cost at the end of the usufruct.

§ 3.—*Other charges*

1152. The usufructuary is responsible, in proportion to the duration of the usufruct, for ordinary charges affecting the property subject to his right and for the other charges that are ordinarily paid with the revenues.

The usufructuary is responsible similarly for extraordinary charges that are payable in periodic instalments over several years.

1153. If a usufructuary by particular title is forced to pay a debt of the succession in order to preserve the property subject to his right, he may require immediate repayment from the debtor or repayment from the bare owner at the end of the usufruct.

1154. The usufructuary under a general legacy and the bare owner are responsible for the payment of the debts of the succession in proportion to their shares in the succession.

The bare owner is responsible for the capital and the usufructuary for the interest.

1155. The usufructuary under a legacy by general title may pay the debts of the succession; the bare owner is accountable therefor to him at the end of the usufruct.

Where the usufructuary elects not to pay the debts of the succession, the bare owner may cause property subject to the right of the usufructuary up to the amount of the debts to be sold or pay the debts himself; in this case, the usufructuary shall, for the duration of the usufruct, pay interest to the bare owner on the amount paid.

1156. The usufructuary is responsible for the costs of any legal proceedings related to his right of usufruct.

Where proceedings relate to both the rights of the bare owner and those of the usufructuary, the rules governing payment of the debts of the succession between the usufructuary under a legacy by general title and the bare owner apply unless the usufruct is terminated by the judgment, in which case the costs are divided equally between the usufructuary and the bare owner.

1157. If, during the usufruct, a third person encroaches on the property of the bare owner or otherwise infringes his rights, the usufructuary shall notify the bare owner, failing which he is responsible for all damage which may result, as if he himself had committed waste.

1158. Neither the bare owner nor the usufructuary is required to replace anything that has fallen into decay.

A usufructuary exempted from insuring the property is not required to replace or pay the value of any property that perishes by superior force.

1159. If a usufruct is established upon a herd or a flock and the entire herd or flock perishes by superior force, the usufructuary exempted from insuring the property shall account to the owner for the skins or their value.

If the herd or flock does not perish entirely, the usufructuary shall replace those animals which have perished, up to the number of the increase.

SECTION IV

EXTINGUISHMENT OF USUFRUCT

1160. Usufruct is extinguished

(1) By the expiry of the term;

(2) By the death of the usufructuary or the dissolution of the legal person;

(3) By the union of the qualities of usufructuary and bare owner in the same person, subject to the rights of third persons;

(4) By the forfeiture or renunciation of the right or its conversion into a rent;

(5) By non-user for ten years.

1161. Usufruct is also extinguished by the total loss of the property over which it is established, unless the property is insured by the usufructuary.

In case of partial loss of the property, the usufruct subsists upon the remainder.

1162. Usufruct is not extinguished by expropriation of the property on which it is established. The indemnity is remitted to the usufructuary under the condition of his rendering account of it at the end of the usufruct.

1163. If a usufruct is granted until a third person reaches a certain age, it continues until the date he would have reached that age, even if he has died.

1164. A usufruct created for the benefit of several usufructuaries successively terminates with the death of the last usufructuary or the dissolution of the last legal person.

The extinguishment of the right of one of the usufructuaries in a joint usufruct benefits the bare owner.

1165. At the end of the usufruct, the usufructuary shall return the property subject to the usufruct to the bare owner in the condition in which it is at that time.

The usufructuary is accountable for any loss caused by his fault or not resulting from normal use of the property.

1166. A usufructuary who is guilty of misuse of enjoyment, who commits waste on the property, who allows it to depreciate or who in any manner endangers the rights of the bare owner may be forfeited of his right.

The court may, according to the gravity of the circumstances, pronounce the absolute extinguishment of the usufruct, with compensation payable immediately or by instalments to the bare owner, or without compensation. It may also declare the usufructuary's right forfeited in favour of a joint or successive usufructuary, or it may impose conditions for the continuance of the usufruct.

The creditors of the usufructuary may intervene in the proceedings to ensure the preservation of their rights; they may offer to repair the waste and provide security for the future.

1167. A usufructuary may renounce his right, in whole or in part.

Where part only of the right is renounced and failing an agreement, the court shall fix the new obligations of the usufructuary, taking into account, in particular, the scope and duration of the right, and the fruits and revenues derived therefrom.

1168. Total renunciation may be set up against the bare owner from the day he is notified of it; partial renunciation may be set up from the date of judicial proceedings or of an agreement between the parties.

1169. A usufructuary having serious difficulty in performing his obligations is entitled to require the bare owner or joint or successive usufructuary to convert his right to an annuity.

Failing agreement, the court, if it confirms the right of the usufructuary, shall fix the annuity, taking into account, in particular,

the scope and duration of the right and the fruits and revenues derived from it.

CHAPTER II

USE

1170. A right of use is the right to enjoy the property of another for a time and to take the fruits and revenues thereof, to the extent of the needs of the user and the persons living with him or his dependants.

1171. The right of use cannot be assigned or seized unless the agreement between the parties provides otherwise.

If the agreement is silent as to whether the right may be assigned or seized, the court may, in the interest of the user and after ascertaining that the owner incurs no damage, authorize the assignment or seizure of the right.

1172. A user whose right bears on only part of a property may use any facility intended for common use.

1173. A user who takes all the fruits and revenues of the property or who uses the entire property is fully responsible for the costs incurred to produce them, for maintenance repairs and for payment of the charges in the same manner as a usufructuary.

Where the user takes only part of the fruits and revenues or uses only part of the property, he shall contribute in proportion to his use.

1174. The provisions governing usufruct, adapted as required, are, in all other respects, applicable to the right of use.

However, the rules relating to conversion of the usufruct into an annuity do not apply to the right of use unless that right may be assigned and seized.

CHAPTER III

SERVITUDES

SECTION I

NATURE OF SERVITUDES

1175. A servitude is a charge imposed on an immovable, the servient land, in favour of another immovable, the dominant land, belonging to a different owner.

Under the charge the owner of the servient land is required to tolerate certain acts of use by the owner of the dominant land or himself abstain from exercising certain rights inherent in ownership.

A servitude extends to all that is necessary for its exercise.

1176. An obligation to perform an act may be attached to a servitude and imposed on the owner of the servient land. The obligation creates a real right that is accessory to the servitude and can only be stipulated for the service or exploitation of the immovable.

1177. Servitudes are either continuous or discontinuous.

Continuous servitudes, such as servitudes of view or construction servitudes, do not require the actual intervention of the holder.

Discontinuous servitudes, such as pedestrian or vehicular rights of way, require the actual intervention of the holder.

1178. Servitudes are either apparent or unapparent.

A servitude is apparent if it is manifested by an external sign; otherwise it is unapparent.

1179. A servitude is established by contract, by will, by destination of proprietor or by the effect of law.

It cannot be established without title, and possession, even immemorial, is insufficient for this purpose.

1180. Servitudes are not affected by the transfer of ownership of the servient or dominant land. They remain attached to the immovables through changes of ownership, subject to the provisions relating to the publication of rights.

1181. Servitude by destination of proprietor shall be evidenced in writing by the owner of the land who, in contemplation of its future parcelling, shall immediately establish the charges that will be laid on one part of the land in favour of other parts.

It may also be evidenced in writing by the owner of the servient land setting forth that the two landed properties now divided formerly belonged to a single owner and that he had established or maintained the material arrangement between them which constitutes the servitude.

SECTION II

EXERCISE OF SERVITUDES

1182. The owner of the dominant land may, at his own expense, take the measures or make all the works necessary for the exercise and preservation of the servitude unless otherwise stipulated in the title establishing the servitude.

At the end of the servitude he shall, at the request of the owner of the servient land, restore the place to its former condition.

1183. The owner of the servient land, charged by the title with making the necessary works for the exercise and preservation of the servitude, may free himself of the charge by abandoning the entire servient land or any part of it sufficient for the exercise of the servitude to the owner of the dominant land.

1184. In no case may the owner of the dominant land make any change that would aggravate the situation of the servient land.

In no case may the owner of the servient land do anything that would tend to diminish the exercise of the servitude or to render it less convenient. However, he may, at his own expense, provided he has an interest in doing so, transfer the site of the servitude to another place where its exercise will be no less convenient to the owner of the dominant land.

1185. If the dominant land is divided, the servitude remains due for each portion, but the situation of the servient land shall not thereby be aggravated.

Thus, in the case of a right of way, all owners of lots resulting from the division of the dominant land shall exercise it over the same place.

1186. Division of the servient land does not affect the rights of the owner of the dominant land.

1187. Except in the case of land enclosed by that of others, a servitude may be redeemed where its usefulness to the dominant land is out of proportion to the inconvenience or depreciation it entails for the servient land.

Failing agreement, the court, if it grants the right of redemption, shall fix the price, taking into account, in particular, the length of time for which the servitude has existed and the change of value entailed by the servitude both in favour of the servient land and to the detriment of the dominant land.

1188. The parties may, in writing, exclude the possibility of redeeming a servitude for a period of not over thirty years.

SECTION III

EXTINGUISHMENT OF SERVITUDES

1189. A servitude is extinguished

(1) By the union of the qualities of owner of the servient land and owner of the dominant land in the same person;

(2) By the express renunciation of the owner of the dominant land;

(3) By the expiry of the term for which it was established;

(4) By redemption;

(5) By non-user for ten years.

1190. In the case of discontinuous servitudes, prescription begins to run from the day the owner of the dominant land ceases to exercise the servitude and in the case of continuous servitudes, from the day any act contrary to their exercise is done.

1191. The mode of exercising a servitude may be prescribed just as the servitude itself, and in the same manner.

1192. Prescription runs even where the dominant land or the servient land undergoes a change of such a kind as to render exercise of the servitude impossible.

CHAPTER IV

EMPHYTEUSIS

SECTION I

NATURE OF EMPHYTEUSIS

1193. Emphyteusis is a right resulting from a contract by which a person acquires for a certain time the right to the full benefit and enjoyment of an immovable owned by another provided he does not endanger its existence and undertakes to make constructions, works or plantations thereon that enhance it or increase its value.

1194. Emphyteusis affecting both the land and an existing immovable may be the subject of a declaration of co-emphyteusis which is governed by the same rules as those provided for a declaration of co-ownership. It is also subject to the rules, adapted as required, applicable to co-ownership established in respect of an existing immovable by an emphyteutic lessee.

1195. The term of the emphyteusis shall be stipulated in the contract and be for not less than ten nor more than one hundred years. If it is for a longer term, it shall be reduced to one hundred years.

1196. A contract of emphyteusis affecting the land on which an existing immovable is held in co-ownership, or affecting both the land and an existing immovable may be renewed without the emphyteutic lessee's being required to make constructions, works or plantations thereon to enhance the immovable or increase its value.

1197. The creditor of the emphyteutic lessee may cause the latter's rights to be seized and sold, subject to the rights of the owner of the immovable.

The creditor of the owner may also cause the latter's rights to be seized and sold, subject to the rights of the emphyteutic lessee.

SECTION II

RIGHTS AND OBLIGATIONS OF THE EMPHYTEUTIC LESSEE AND OF THE OWNER

1198. The emphyteutic lessee has all the rights of an owner in the immovable, subject to the restrictions contained in this chapter and in the contract of emphyteusis.

The contract may limit the rights of the parties, particularly by granting rights or guarantees to the owner for protecting the value of the property, ensuring its conservation, yield or use or by otherwise preserving the rights of the owner or of the emphyteutic lessee or regulating the performance of the contract.

1199. The emphyteutic lessee shall, at his own expense, and after convening the owner, cause a statement of the immovables subject to his right to be drawn up, unless the owner has exempted him therefrom.

1200. The emphyteutic lessee is responsible for a partial loss of the immovable; he remains liable in such a case for full payment of the price stipulated in the contract.

1201. The emphyteutic lessee is responsible for repairs, even major repairs, concerning the immovable or the constructions, works or plantations made for the performance of his obligation.

1202. An emphyteutic lessee who commits waste or fails to prevent the deterioration of the immovable or in any manner endangers the rights of the owner may be forfeited of his right.

The court, according to the gravity of the circumstances, may rescind the contract, with compensation payable immediately or by instalments to the owner, or without compensation, or it may require the emphyteutic lessee to furnish other security or impose any other obligations or conditions on him.

The creditors of the emphyteutic lessee may intervene in the proceedings to preserve their rights; they may offer to repair the waste and give security for the future.

1203. The emphyteutic lessee is responsible for all real charges affecting the immovable.

1204. The owner has the same obligations towards the emphyteutic lessee as a vendor.

1205. Where a price payable in a lump sum or by instalments is fixed in the contract and the emphyteutic lessee fails to pay it for three years, the owner is entitled, after at least ninety days' notice, to apply for resiliation of the contract.

Resiliation cannot be applied for where divided co-ownership is established in respect of an immovable built by the emphyteutic

lessee. The same applies where the immovable is the subject of a declaration of co-emphyteusis.

SECTION III

TERMINATION OF EMPHYTEUSIS

1206. Emphyteusis is terminated

(1) By the expiry of the term stipulated in the contract;

(2) By the total loss or expropriation of the immovable;

(3) By the resiliation of the contract;

(4) By the union of the qualities of owner and emphyteutic lessee in the same person;

(5) By non-user for ten years.

1207. Upon termination of the emphyteusis, the owner resumes possession of the immovable free of all the rights and charges granted by the emphyteutic lessee, unless the termination of the emphyteusis results from the resiliation by agreement of the contract or from the union of the qualities of owner and emphyteutic lessee in the same person.

1208. Upon termination of the emphyteusis, the emphyteutic lessee shall return the immovable in a good state of repair with the constructions, works or plantations stipulated in the contract, unless they have perished by superior force.

Any additions made to the immovable without obligation by the emphyteutic lessee are treated as disbursements made by a possessor in bad faith.

1209. Unless the emphyteutic lessee has renounced his right, emphyteusis may also be terminated by abandonment, which may take place only if the emphyteutic lessee has fulfilled all his past obligations and leaves the immovable free of all charges.

TITLE FIVE

RESTRICTIONS ON THE FREE DISPOSITION OF CERTAIN PROPERTY

CHAPTER I

STIPULATIONS OF INALIENABILITY

1210. Any act by gratuitous title may restrict the exercise of the right to dispose of property.

A stipulation of inalienability shall be made in writing either at the time of transfer of the property to a person who becomes the owner of the property or the holder of a dismembered right of ownership in it, or at the time of the transfer of the property to a trust.

The stipulation of inalienability is valid only if it is temporary and justified by a serious and legitimate interest. Nevertheless, it may be valid for the duration of a substitution or trust, where applicable.

1211. A person whose property is inalienable may be authorized by the court to dispose of the property if the interest that had justified the stipulation of inalienability has disappeared or where a greater interest comes to require it.

1212. A stipulation of inalienability cannot be set up against third persons unless it is published in the proper register.

1213. A stipulation of inalienability of a property makes the property unseizable for any debt contracted before or during the period of inalienability by the person who receives the property, subject, particularly, to the provisions of the Code of Civil Procedure.

1214. Any clause tending to prevent a person whose property is inalienable from contesting the validity of the stipulation of inalienability or from applying for authorization to transfer the property is null.

Any penal clause to the same effect is also null.

1215. The nullity of an alienation made notwithstanding a stipulation of inalienability and without leave from the court cannot be invoked by anyone except the person who made the stipulation and his successors or the person for whose benefit the stipulation was made.

CHAPTER II

SUBSTITUTION

SECTION I

NATURE AND SCOPE OF SUBSTITUTION

1216. Substitution exists where a person receives property by a liberality with the obligation of delivering it over to a third person after a certain period.

Substitution is established by gift or by will; it shall be evidenced in writing and published at the publication of rights office.

1217. The person who has the obligation to deliver over is called the institute and the person who is entitled to take after him is called the substitute.

A substitute who takes with the obligation to deliver over becomes in turn the institute in respect of the subsequent substitute.

1218. A prohibition against disposing of the property by will that is subject to no other indication entails substitution in favour of the intestate heirs of the donee or legatee with respect to given or bequeathed property remaining at his death.

1219. A substitution cannot extend to more than two successive ranks of persons exclusive of the initial institute, and is without effect for subsequent ranks.

Transmissions between co-institutes upon the death of one of them, where it is stipulated that his share passes to the surviving institutes, is not considered to be made to a subsequent rank.

1220. The rules on successions, particularly those relating to the right of option or to testamentary dispositions, adapted as required, apply to a substitution from the time it opens, whether it was created by gift or by will.

SECTION II

SUBSTITUTIONS BEFORE OPENING

§ 1.—*Rights and obligations of the institute*

1221. Before the opening of a substitution, the institute is the owner of the substituted property, which forms, within his personal patrimony, a separate patrimony intended for the substitute.

1222. Within two months after the gift or after acceptance of the legacy, the institute, in the manner of an administrator of the property of others, shall make an inventory of the property at his own expense, after convening the substitute.

1223. The institute, in exercising his rights and performing his obligations, shall act with prudence and diligence, in view of the rights of the substitute.

1224. The institute shall perform all acts necessary to maintain and preserve the property.

He shall pay the charges and debts of all kinds that became due before the opening; he shall collect the claims, give discharge therefor and exercise all judicial recourses relating to the substituted property.

1225. The institute shall insure the property against ordinary risks such as fire and theft. He is, however, dispensed from that obligation if the insurance premium is too high in relation to the risks.

The insurance indemnity becomes substituted property.

1226. The right of an institute to begin or continue agricultural, sylvicultural or mining operations on substituted land is governed by the rules on usufruct.

1227. An institute may alienate the substituted property by onerous title or lease it. He may also charge it with a hypothec if that is required for its upkeep and conservation or to make an investment on behalf of the substitution.

The rights of the acquirer, creditor or lessee are unaffected by the rights of the substitute at the opening of the substitution.

1228. The institute is bound to reinvest, in the name of the substitution, the proceeds of any alienation of substituted property

and the capital paid to him before the opening or received by him from the grantor, in accordance with the provisions relating to investments presumed sound.

1229. On each anniversary of the date of inventory of the property, the institute shall inform the substitute of any change in the general mass of the property; he shall also inform him of any reinvestment he has made of proceeds from alienation of property.

1230. If the constituting act of the substitution provides therefor, the institute may dispose of the substituted property gratuitously or not reinvest the proceeds of its alienation; he has no right to bequeath it unless that is expressly permitted by the act.

In such cases, the substitution has effect only in respect of the property that was not disposed of by the institute.

1231. Creditors holding a preference or hypothec on substituted property have, in respect of that property, the rights and remedies conferred on them by law.

The other creditors may cause substituted property to be seized and sold by judicial sale, after discussion of the personal patrimony of the institute. The substitute may oppose the seizure and demand that the seizure and sale be limited to the rights conferred on the institute by the substitution. Failing opposition, the sale is valid; the purchaser has a definitive title and the substitute's remedy is exercisable only against the institute.

1232. The institute may, before the substitution opens, renounce his rights in favour of the substitute and deliver over the substituted property to him in anticipation.

In no case does renunciation by the institute prejudice the rights of his creditors or the rights of the eventual substitute.

§ 2.—*Rights of the substitute*

1233. Before the substitution opens, the substitute has a contingent right in the property substituted; he may dispose of or renounce his right and perform any conservatory act to ensure the protection of his right.

1234. Where the institute refuses or fails to make an inventory of the property within the required time, the substitute may do so at the expense of the institute. He shall first convene the institute and the other interested persons.

1235. The institute shall, if ordered by the court on the motion of the substitute or any interested person who establishes that such a measure is required, take out insurance or furnish other security to guarantee the performance of his obligations.

He shall also furnish additional security where his obligations are increased before the opening of the substitution.

1236. If the institute fails to perform his obligations or acts in a manner that endangers the rights of the substitute, the court may, depending on the gravity of the circumstances, deprive him of revenues, require him to restore the capital, declare his rights forfeited in favour of the substitute or appoint a sequestrator chosen preferably from the substitutes.

1237. The rights of a substitute who is not yet conceived are exercised by the person designated by the grantor to act as curator to the substitution and who accepts the office or, where such a person is not designated or does not accept, by the person appointed by the court on the application of the institute or any interested person.

The Public Curator may be designated to act.

SECTION III

OPENING OF THE SUBSTITUTION

1238. Unless an earlier time has been fixed by the grantor, the opening of the substitution takes place on the death of the institute.

Where the institute is a legal person, the substitution cannot open more than thirty years after the gift or the opening of the succession, or after the day its right arises.

1239. Where it is stipulated that the share of an institute passes, on his death, to the surviving institutes of the same rank, the opening of the substitution takes place only on the death of the last institute.

However, an opening so delayed cannot prejudice the rights of the substitute who would have received on the death of an institute but for the stipulation; the right to receive is vested in the substitute but its exercise is suspended until the substitution opens.

1240. A substitute must have the required qualifications to receive by gift or by will at the time the substitution opens.

Where there are several substitutes of the same rank, only one need have the required qualifications to receive at the time his right arises to protect the right of all the other substitutes to receive, if they subsequently accept the substitution.

SECTION IV

SUBSTITUTION AFTER OPENING

1241. The substitute who accepts the substitution receives the property directly from the grantor and is, by the opening, seized of ownership of the property.

1242. The institute shall, at the opening, render account to the substitute and deliver over the substituted property to him.

Where the substituted property is no longer in kind, the institute shall deliver over whatever has been acquired through reinvestment or, failing that, the value of the property at the time of the alienation.

1243. The institute shall deliver the property in the condition it is in at the opening of the substitution.

The institute is responsible for any loss caused by his fault or not resulting from normal use.

1244. Where the substitution affects only the residue of the property given or bequeathed, the institute shall deliver over only the property remaining and the price still due on the alienated property.

1245. The institute is entitled to repayment, with interest accrued from the opening, of capital debts that he has paid without having been charged to do so and the expenses generally debited from the capital that he has incurred by reason of the substitution.

The institute is also entitled to repayment, in proportion to the duration of his right, of expenses generally debited from the revenues for any object that exceeds that duration.

1246. The institute is entitled to be reimbursed for the useful disbursements he has made, subject to the rules applicable to possessors in good faith.

1247. The opening of a substitution revives the claims and debts that existed between the institute and the grantor and

terminates the confusion, in the person of the institute, of the qualities of creditor and debtor, except in respect of interest accrued until the opening.

1248. The institute may retain the substituted property until payment of what is due to him.

1249. The heirs of the institute shall perform the obligations that this section imposes on the institute, and they exercise the rights it confers on him.

The heirs of the institute shall continue anything that necessarily follows the acts performed by him or that cannot be deferred without risk of loss.

SECTION V

LAPSE AND REVOCATION OF SUBSTITUTION

1250. Lapse of a testamentary substitution with regard to an institute is effected without giving rise to representation and benefits his co-institutes or, in the absence of co-institutes, the substitute.

Lapse of a testamentary substitution with regard to a substitute benefits his co-substitutes, if any; otherwise, it benefits the institute.

1251. The donor may revoke the substitution with regard to the substitute, until the opening, as long as it has not been accepted by or for the substitute. However, in respect of the donor, the substitute is deemed to have accepted where he is the child of the institute or where one of the co-substitutes has accepted the substitution.

1252. Revocation of a substitution with regard to the institute benefits the co-institute, if any; otherwise it benefits the substitute; revocation with regard to the substitute benefits the co-substitute, if any; otherwise it benefits the institute.

1253. The grantor may reserve for himself the prerogative of determining the share of the substitutes or confer that prerogative on the institute.

The exercise of the prerogative by the donor does not constitute a revocation of the substitution even if in effect it completely excludes a substitute from the benefit of the substitution.

TITLE SIX

CERTAIN PATRIMONIES BY APPROPRIATION

CHAPTER I

FOUNDATION

1254. A foundation results from an act whereby a person irrevocably appropriates the whole or part of his property to the durable fulfilment of a socially beneficial purpose.

It shall not have the making of profit or the operation of an enterprise as its main object.

1255. The property of the foundation constitutes either an autonomous patrimony distinct from that of the settlor or any other person, or the patrimony of a legal person.

In the first case, the foundation is governed by the provisions of this title relating to a social trust, subject to the provisions of law; in the second case, the foundation is governed by the laws applicable to legal persons of the same kind.

1256. A foundation created by trust is established by gift or by will in accordance with the rules governing those acts.

1257. Unless otherwise provided in the constituting instrument of the foundation, the initial property of the trust foundation or any property substituted therefor or added thereto shall be durably maintained and allow for the fulfilment of the purpose, either by the distribution only of those revenues that derive therefrom or by a use that does not appreciably alter the substance of the initial property.

CHAPTER II

TRUST

SECTION I

NATURE OF TRUST

1258. A trust results from an act whereby a person, the settlor, transfers property from his patrimony to another patrimony constituted by him which he appropriates to a particular purpose and which a trustee undertakes, by his acceptance, to hold and administer.

1259. The trust patrimony, consisting of the property transferred in trust, constitutes a patrimony by appropriation, autonomous and distinct from that of the settlor, trustee or beneficiary and in which none of them has any real right.

1260. A trust is established by contract, whether by onerous title or gratuitously, by will, by judgment or, in certain cases, by operation of law.

1261. A trust is created upon the acceptance of the trustee or of one of the trustees if there are several.

In the case of a testamentary trust, the effects of the trustee's acceptance are retroactive to the day of death.

1262. Acceptance of the trust divests the settlor of the property, charges the trustee with seeing to the appropriation of the property and the administration of the trust patrimony and is sufficient to establish the right of the beneficiary with certainty.

SECTION II

VARIOUS KINDS OF TRUSTS AND THEIR DURATION

1263. Trusts are constituted for personal, private or social purposes.

1264. A personal trust is constituted gratuitously for the purpose of securing a benefit for a determinate or determinable person.

1265. A private trust is a trust created for the object of erecting, maintaining or preserving a corporeal property or of using a property appropriated to a specific use, whether for the indirect benefit of a person or in his memory, or for some other private purpose.

1266. A trust constituted by onerous title, particularly one created for the purpose of allowing the making of profit by means of investments, providing for retirement or procuring another benefit for the settlor or for the persons he designates or for the members of an association or organization, or for employees or shareholders, is also a private trust.

1267. A social trust is a trust constituted for a purpose of general interest, such as a cultural, educational, philanthropic, religious or scientific purpose.

It shall not have the making of profit or the operation of an enterprise as its main object.

1268. A personal trust constituted for the benefit of several persons successively cannot include more than two ranks of beneficiaries of the fruits and revenues exclusive of the beneficiary of the capital; it is without effect in respect of any subsequent ranks it might contemplate.

Transmissions of fruits and revenues between co-beneficiaries of the same rank are subject to the rules of substitution relating to transmissions between co-institutes of the same rank.

1269. The right of beneficiaries of the first rank opens not later than one hundred years after the trust is constituted, even if a longer term is stipulated. The right of beneficiaries of subsequent ranks may open later but solely for the benefit of those beneficiaries who have the required quality to receive at the expiry of one hundred years after creation of the trust.

In no case may a legal person be a beneficiary for a period exceeding one hundred years, even if a longer term is stipulated.

1270. A private or social trust may be perpetual.

SECTION III

ADMINISTRATION OF TRUST

§ 1.—*Appointment and office of trustee*

1271. Any natural person having the full exercise of his civil rights, and any legal person authorized by law, may act as a trustee.

1272. The settlor or the beneficiary may be a trustee but he shall act jointly with a trustee who is neither the settlor nor a beneficiary.

1273. The settlor may appoint one or several trustees or provide the mode of their appointment or replacement.

1274. The court may, at the request of an interested person and after notice has been given to the persons it indicates, appoint a trustee where the settlor, having manifested his intention of doing so, has nevertheless failed to do so or where it is impossible to appoint or replace a trustee.

The court may appoint one or several other trustees where required by the conditions of the administration.

1275. A trustee has the control and the exclusive administration of the trust patrimony, and the titles relating to the property of which it is composed shall be drawn up in his name; he has the exercise of all the rights attached to the patrimony and may take any proper measure to secure its appropriation.

A trustee shall act as the administrator of the property of others charged with full administration.

§ 2.—*The beneficiary and his rights*

1276. The beneficiary of a trust constituted gratuitously shall be qualified to receive by gift or by will at the time his right opens.

Where there are several beneficiaries of the same rank, it is sufficient that one of them is so qualified to preserve the right of the others if they avail themselves of it.

1277. To receive, the beneficiary of a trust shall meet the conditions required by the constituting instrument.

1278. The settlor may reserve the right to receive the fruits and revenues or even, where such is the case, the capital of the trust, even a trust constituted by gratuitous title, or share in the benefits it procures.

1279. The settlor may reserve for himself the power to appoint the beneficiaries or determine their shares, or confer it on the trustees or a third person.

In the case of a social trust, the trustee's power to appoint the beneficiaries and determine their shares is presumed. In the case of personal or private trusts, the power to appoint may be exercised by the trustee or the third person only if the class of persons from which he may appoint the beneficiary is clearly determined in the constituting instrument.

1280. The person holding the power to appoint the beneficiaries or determine their shares shall exercise it as he sees fit, he may change or revoke his decision if the trust requires it.

He shall not appoint beneficiaries for his own benefit.

1281. While the trust is in effect, the beneficiary has the right to require, according to the constituting instrument, either the provision of a benefit granted to him or the payment of the fruits and revenues and of the capital, or of only one of these.

1282. The beneficiary of a trust constituted by gratuitous title is presumed to have accepted the right granted to him and he is entitled to dispose of it.

He may renounce it at any time; he must do so by notarial deed *en minute* if he is the beneficiary of a personal or private trust.

1283. If the beneficiary renounces his right, or if his right lapses, it passes, according to whether he is the beneficiary of the fruits and revenues or of the capital, to the co-beneficiaries of the fruits and revenues or of the capital, in proportion to the share of each.

If he is the sole beneficiary of the fruits and revenues of his rank, his right passes, in proportion to the share of each, to the beneficiaries of the fruits and revenues of the second rank, or where there are no such beneficiaries, to the beneficiaries of the capital.

§ 3.—*Measures of supervision and control*

1284. The administration of a trust is subject to the supervision of the settlor or of his heirs, if he has died, and of the beneficiary, even a future beneficiary.

In addition, in cases provided for by law, the administration of a private or social trust is subject, according to its object and purpose, to the supervision of the persons or bodies designated by law.

1285. Upon the constitution of a private or social trust subject to the supervision of a person or body designated by law, the trustee shall file with the person or body a statement indicating, in particular, the nature, object and term of the trust and the name and address of the trustee.

The trustee shall, at the request of the person or body, allow the trust records to be examined and furnish any account, report or information requested of him.

1286. The rights of the beneficiary of a personal trust, if not yet conceived, are exercised by the person who, having been designated by the settlor to act as curator, accepts the office or, failing him, by the person appointed by the court on the application of the

trustee or any interested person. The Public Curator may be designated to act.

In a private trust of which no person, even determinable or future, may be a beneficiary, the rights granted to the beneficiary under this subsection may be exercised by the Public Curator.

1287. The settlor, the beneficiary or any other interested person may, notwithstanding any stipulation to the contrary, take action against the trustee to compel him to perform his obligations or to perform any act which is necessary in the interest of the trust, to enjoin him to abstain from any action harmful to the trust or to have him removed.

He may also impugn any acts performed by the trustee in fraud of the trust patrimony or the rights of the beneficiary.

1288. The court may authorize the settlor, the beneficiary or any other interested person to take legal action in the place and stead of the trustee when, without sufficient reason, he refuses or neglects to act or is prevented from acting.

1289. The trustee, the settlor and the beneficiary are jointly and severally liable for acts in which they participate performed in fraud of the rights of the creditors of the settlor or of the trust patrimony.

SECTION IV

CHANGES TO TRUST AND TO PATRIMONY

1290. Any person may increase the trust patrimony by transferring property to it by contract or by will in conformity with the rules applicable to the constitution of a trust. The person does not acquire the rights of a settlor by that fact.

The transferred property is mingled with the other property of the trust patrimony and is administered in accordance with the provisions of the constituting instrument.

1291. Where a trust has ceased to meet the first intent of the settlor, particularly as a result of circumstances unknown to him or unforeseeable and which make the pursuit of the purpose of the trust impossible or too onerous, the court may, on the application of an interested person, terminate the trust; the court may also, in the case of a social trust, substitute another closely related purpose for the original purpose of the trust.

Where the trust continues to meet the intent of the settlor but new measures would allow a more faithful compliance with his intent or favour the fulfilment of the trust, the court may amend the provisions of the constituting instrument.

1292. Notice of the application shall be given to the settlor and to the trustee and, where such is the case, to the beneficiary, to the liquidator of the succession of the settlor, or his heirs, and to any other person or body designated by law, where the trust is subject to their supervision.

SECTION V

TERMINATION OF TRUST

1293. A trust is terminated by the renunciation or lapse of the right of all the beneficiaries, both of the capital and of the fruits and revenues.

A trust is also terminated by the expiry of the term or the fulfilment of the condition, by the attainment of the purpose of the trust or by the impossibility, confirmed by the court, of attaining it.

1294. At the termination of a trust, the trustee shall deliver the property to those who are entitled to it.

Where there is no beneficiary, any property remaining when the trust is terminated devolves to the settlor or his heirs.

1295. The property of a social trust that terminates by the impossibility of its fulfilment devolves to a trust, to a legal person or to any other group of persons devoted to a purpose as nearly like that of the trust as possible, designated by the court on the recommendation of the trustee. The court shall also obtain the advice of any person or body designated by law to supervise the trust.

TITLE SEVEN

ADMINISTRATION OF PROPERTY OF OTHERS

CHAPTER I

GENERAL PROVISIONS

1296. Any person who is charged with the administration of property or a patrimony that is not his own assumes the office of

administrator of the property of others if the law or the act constituting his administration so provides or indicates no other form of administration.

1297. Unless, according to law, the act or the circumstances, the administration is gratuitous, the administrator is entitled to the remuneration fixed in the act, by usage or by law, or to the remuneration established according to the value of the services rendered.

A person acting without right or authorization is not entitled to any remuneration.

CHAPTER II

KINDS OF ADMINISTRATION

SECTION I

SIMPLE ADMINISTRATION OF PROPERTY OF OTHERS

1298. The person charged with simple administration shall perform all the acts necessary for the preservation of the property or useful for the maintenance of the use for which the property is ordinarily destined.

1299. An administrator charged with simple administration is bound to collect the fruits and revenues of the property under his administration and to exercise the rights attached to the property.

He shall collect the debts under his administration and give valid discharge for them; he shall exercise the rights attached to the securities administered by him, such as voting, conversion or redemption rights.

1300. An administrator shall continue the use or operation of the property which produces fruits and revenues without changing its destination, unless he is authorized to make such a change by the beneficiary or, if that is not possible, by the court.

1301. An administrator is bound to invest the sums of money under his administration in accordance with the rules of this title relating to investments presumed to be sound investments.

He may likewise change any investment made before he took office or that he has made himself.

1302. An administrator, with the authorization of the beneficiary or, if the beneficiary is prevented from acting, of the court, may alienate the property by onerous title or charge it with a hypothec where that is necessary for the payment of the debts, maintenance of the use for which the property is ordinarily destined, or the preservation of its value.

An administrator may, of his own initiative, notwithstanding anything in this article, alienate any property that is perishable or likely to depreciate rapidly.

SECTION II

FULL ADMINISTRATION OF PROPERTY OF OTHERS

1303. A person charged with full administration shall preserve the property and make it productive, increase the patrimony or appropriate it to a purpose, where the interest of the beneficiary or the pursuit of the purpose of the trust requires it.

1304. An administrator may, to perform his obligations, alienate the property by onerous title, charge it with a real right or change its destination and perform any other necessary or useful act, including any form of investment.

CHAPTER III

RULES OF ADMINISTRATION

SECTION I

OBLIGATIONS OF ADMINISTRATOR TOWARDS THE BENEFICIARY

1305. The administrator of the property of others shall, in carrying out his duties, comply with the obligations imposed on him by law or by the constituting act. He shall act within the powers conferred on him.

He is not liable for loss of the property resulting from a superior force or from its age, its perishable nature or its normal and authorized use.

1306. An administrator shall act with prudence and diligence.

He shall also act honestly and faithfully in the best interest of the beneficiary or of the object pursued.

1307. No administrator may exercise his powers in his own interest or that of a third person or place himself in a position where his personal interest is in conflict with his obligations as administrator.

If the administrator himself is a beneficiary, he shall exercise his powers in the common interest, giving the same consideration to his own interest as to that of the other beneficiaries.

1308. An administrator shall, without delay, notify the beneficiary in writing of any interest he has in an enterprise that may place him in a position of conflict of interest and of the rights he may invoke against the beneficiary or in the property administered indicating, where that is the case, the nature and value of the rights. He is not bound to notify him of the interest or rights deriving from the act having given rise to the administration.

The person or body designated by law shall be notified of any interest or rights pertaining to a trust under his or its supervision.

1309. No administrator may, in the course of his administration, become a party to a contract affecting the administered property or acquire otherwise than by succession any right in the property or against the beneficiary.

He may, nevertheless, be expressly authorized to do so by the beneficiary or, in case of impediment or if there is no determinate beneficiary, by the court.

1310. No administrator may mingle the administered property with his own property.

1311. No administrator may use for his benefit the property he administers or information he obtains by reason of his administration except with the consent of the beneficiary or unless it results from the law or the constituting act of the administration.

1312. Unless it is of the very nature of his administration to do so, no administrator may dispose gratuitously of the property entrusted to him, except property of small value disposed of in the interest of the beneficiary or of the object pursued.

No administrator may, except for value, renounce any right belonging to the beneficiary or forming part of the patrimony administered.

1313. An administrator may sue and be sued in respect of anything connected with his administration; he may also intervene in any action respecting the administered property.

1314. If there are several beneficiaries of the administration, concurrently or successively, the administrator shall act impartially in their regard, taking account of their respective rights.

1315. The court, in appreciating the extent of the responsibility of an administrator and fixing the resulting damages, may reduce them in view of the circumstances in which the administration is assumed or of the fact that the administrator acts gratuitously or that he is a minor or a protected person of full age.

SECTION II

OBLIGATIONS OF ADMINISTRATOR AND BENEFICIARY TOWARDS THIRD PERSONS

1316. Where an administrator binds himself, within the limits of his powers, in the name of the beneficiary or the trust patrimony, he is not personally responsible towards third persons with whom he enters into contracts.

He is responsible towards them if he binds himself in his own name, subject to any rights they may have against the beneficiary or the trust patrimony.

1317. Where an administrator exceeds his powers, he is responsible towards third persons with whom he enters into contracts unless he gave them sufficient communication of that fact or unless the obligations contracted were expressly or tacitly ratified by the beneficiary.

1318. An administrator who exercises alone powers that his mandate requires him to exercise jointly with another person is deemed to have exceeded his powers.

He is deemed not to exceed his powers if he exercises them more advantageously than he is required to do.

1319. The beneficiary is responsible towards third persons for the damage caused by the fault of the administrator in carrying out his duties only up to the amount of the benefit he has derived from the act. In the case of a trust, these obligations fall back upon the trust patrimony.

1320. Where a person fully capable of exercising his civil rights has given reason to believe that another person was the administrator of his property, he is responsible towards third persons who in good faith have entered into contracts with that other person, as though the property had been under administration.

SECTION III

INVENTORY, SECURITY AND INSURANCE

1321. An administrator is not bound to make an inventory, to take out insurance or to furnish other security to guarantee the performance of his obligations unless required to do so by law or by the act, or, again, by the court on the application of the beneficiary or any interested person.

Where the act creates these obligations, the administrator may apply for an exemption if circumstances warrant.

1322. In making its decision, the court having cognizance of the application shall take account of the value of the property administered, the situation of the parties and the other circumstances.

It cannot grant the application if that would, in effect, call into question the terms of the initial agreement between the administrator and the beneficiary.

1323. The inventory an administrator may be bound to make shall contain a faithful and exact enumeration of all the property entrusted to his administration or constituting the administered patrimony.

In particular, it shall contain the following:

(1) The description of the immovables, and a description of the movables, with indication of their value and, in the case of a universality of movable property, sufficient identification of the universality;

(2) A description of the currency in cash and other securities;

(3) A listing of valuable documents.

The inventory shall also contain a debt statement and conclude with a recapitulation of assets and liabilities.

1324. The inventory shall be made by notarial deed *en minute*. It may also be made by a private writing before two witnesses. In the

latter case, the author and the witnesses shall sign it, indicating the date and place of execution.

1325. Where the administered patrimony contains personal effects of the holder of the patrimony or, as the case may be, of the deceased, a general reference to them in the inventory is sufficient, describing only clothing, personal papers, jewelry or everyday objects worth over $100 each.

1326. The property described in the inventory is presumed to be in good condition on the date of preparation of the inventory, unless the administrator appends a document attesting the contrary.

1327. The administrator shall furnish a copy of the inventory to the person who entrusted him with the administration and to the beneficiary of the administration, and also to every other person he knows to have an interest. He shall also, where required by law, file the inventory or notice of the close of the inventory in the indicated place, specifying in the latter case where the inventory may be consulted.

Any interested person may contest the inventory or any item therein; he may also demand that a new inventory be prepared.

1328. An administrator may insure the property entrusted to him against ordinary risks such as fire and theft at the expense of the beneficiary or trust.

He may also take out insurance guaranteeing the performance of his obligations; he shall do so at the expense of the beneficiary or trust if his administration is gratuitous.

SECTION IV

JOINT ADMINISTRATION AND DELEGATION

1329. Where several administrators are charged with the administration, a majority of them may act unless the act or the law requires them to act jointly or in a determinate proportion.

1330. Where the administrators are prevented from acting by a majority or in the specified proportion, owing to an impediment or the systematic opposition of some of them, the others may act alone for conservatory acts; they may also, with the authorization of the court, act alone for acts requiring immediate action.

Where the situation persists and the administration is seriously impaired by it, the court, on the application of an interested person, may exempt the administrators from acting in the specified proportion, divide their duties, give a casting vote to one of them or make any order it sees fit in the circumstances.

1331. Joint administrators are jointly and severally liable for their administration.

However, where the duties of joint administrators have been divided by law, the act or the court, and the division has been made accordingly, each administrator is liable for his own administration only.

1332. An administrator is presumed to have approved any decision made by his co-administrators. He is responsible with them for the decision unless he immediately indicates his dissent to them and notifies it to the beneficiary within a reasonable time.

The administrator may be relieved of responsibility, however, if he proves that he was unable for serious reasons to make his dissent known to the beneficiary in due time.

1333. An administrator is presumed to have approved a decision made in his absence unless he makes his dissent known to the other administrators and to the beneficiary within a reasonable time after becoming aware of the decision.

1334. An administrator may delegate his duties or be represented by a third person for specific acts; however, he cannot delegate generally the conduct of the administration or the exercise of a discretionary power, except to his co-administrators.

He is accountable for the person mandated by him if, among other things, he knew or should have known that the person was incompetent or he was not authorized to give the mandate.

1335. A beneficiary who suffers prejudice may repudiate the acts of the person mandated by the administrator if they are done contrary to the constituting act or to usage.

The beneficiary may also exercise his rights of action against the mandated person even where the administrator was duly empowered to give the mandate.

SECTION V

PRESUMED SOUND INVESTMENTS

1336. Investments in the following are presumed sound:

(1) Corporeal immovables situated in Québec;

(2) Bonds or other evidences of indebtedness issued or guaranteed by Québec, Canada or a province of Canada, the United States of America or any of its member states, the International Bank for Reconstruction and Development, a municipality or a school board in Canada, or a fabrique in Québec;

(3) Bonds or other evidences of indebtedness issued by a legal person which operates a public service in Canada and which is entitled to impose a tariff for such service;

(4) Bonds or other evidences of indebtedness secured by an undertaking, towards a trustee, of Québec, Canada or a province of Canada, to pay sufficient subsidies to meet the interest and the capital on the maturity of each;

(5) Bonds or other evidences of indebtedness of a company in the following cases:

(*a*) They are secured by a hypothec ranking first on a corporeal immovable, or by securities presumed to be sound investments;

(*b*) They are secured by a hypothec ranking first on equipment and the company has regularly serviced the interest on its borrowings during the last ten financial years;

(*c*) They are issued by a company whose common or preferred shares are presumed sound investments;

(6) Bonds or other evidences of indebtedness issued by a loan society incorporated by a statute of Québec or authorized to do business in Québec under the Loan and Investment Societies Act, provided it has been specially approved by the Government and its ordinary operations in Québec consist in making loans to municipalities or school boards and to fabriques or loans secured by hypothec ranking first on immovables situated in Québec;

(7) Debts secured by hypothec on immovables in Québec:

(*a*) If payment of the capital and interest is guaranteed or secured by Québec, Canada or a province of Canada;

(*b*) If the amount of the debt is not more than seventy-five per cent of the value of the immovable property securing payment of the debt after deduction of the other debts secured by the same immovable and ranking equally with or before the debt;

(*c*) If the amount of the debt that exceeds seventy-five per cent of the value of the immovable by which it is secured, after deduction of the other debts secured by the same immovable and ranking equally with or before the debt, is guaranteed or secured by Québec, Canada or a province of Canada, the Central Mortgage and Housing Corporation, the Société d'habitation du Québec or a hypothec insurance policy issued by a company holding a permit under the Act respecting insurance;

(8) Fully paid preferred shares issued by a company whose common shares are presumed sound investments or which, during the last five financial years, has distributed the stipulated dividend on all its preferred shares;

(9) Common shares issued by a company that for three years has been meeting the timely disclosure requirements defined in the Securities Act to such extent as they are listed by a stock exchange recognized for that purpose by an order of the Government made on the recommendation of the Commission des valeurs mobilières, and when the market capitalization of the company, not considering preferred shares or blocks of shares of ten per cent or more, is higher than the amount fixed in the order;

(10) Shares of a mutual fund and units of an unincorporated mutual fund or of a private trust, provided that sixty per cent of its portfolio consists of presumed sound investments, in the following cases:

(*a*) The shares or units meet the requirements of subparagraph *a* of paragraph 11 of section 3 of the Securities Act;

(*b*) The company, the fund or the trust has been fulfilling the timely disclosure requirements defined by that Act for three years.

1337. The administrator shall decide on the investments to make according to the yield and the anticipated capital gain; so far as possible, he shall work toward a diversified portfolio producing fixed income and variable revenues in the proportion suggested by the prevailing economic conditions.

He shall not, however, acquire more than five per cent of the shares of the same company nor acquire shares, bonds or other

evidences of indebtedness of a legal person or limited partnership which has failed to pay the prescribed dividends on its shares or interest on its bonds or other securities, nor grant a loan to that legal person or partnership.

1338. An administrator may deposit the sums of money entrusted to him in or with a bank, a savings and credit union or any other financial institution, if the deposit is repayable on demand or on thirty days' notice.

He may also deposit the sums of money for a longer term if repayment of the deposit is fully guaranteed by the Régie de l'assurance-dépôts du Québec; otherwise, he may not do so except with leave of the court and on the conditions it determines.

1339. An administrator may maintain the existing investments upon his taking office even if they are not presumed sound investments.

The administrator may also hold securities which, following the reorganization, winding-up or amalgamation of a legal person, replace securities he held.

1340. An administrator who acts in accordance with this section is presumed to act prudently.

An administrator who makes an investment he is not authorized to make is, by that very fact and without further proof of fault, liable for any loss resulting from it.

1341. Investments made in the course of administration shall be made in the name of the administrator acting in that quality.

SECTION VI

APPORTIONMENT OF PROFIT AND EXPENDITURE

1342. Apportionment of profit and expenditure between the beneficiary of the fruits and revenues and the beneficiary of the capital shall be made in accordance with the stipulations and clear intention of the constituting act.

Failing sufficient indication in the act, apportionment shall be made as equitably as possible, taking into account the object of the administration, the circumstances that gave rise to it and generally recognized accounting principles.

1343. The revenue account is generally debited for the following expenditures and other expenditures of the same kind:

(1) Insurance premiums, the cost of minor repairs and other ordinary expenses of administration;

(2) One-half of the remuneration of the administrator and his reasonable expenses for joint administration of the capital and fruits and revenues;

(3) Taxes payable on the administered property;

(4) Unless the court orders otherwise, costs paid to safeguard the rights of the beneficiary of the fruits and revenues and one-half of the cost of the judicial rendering of account;

(5) Amortization of the property, except property used by the beneficiary for personal purposes.

The administrator may, to maintain revenue at a regular level, spread substantial expenses over a reasonable period.

1344. The capital account is generally debited for expenditures that are not debited from the revenues, including expenses pertaining to capital investment, alienation of property, safeguard of the rights of the capital beneficiary or the right of ownership of the administered property.

Taxes on gains and other amounts attributable to capital, even where the law governing such taxes considers them to be income taxes, are also generally debited from the capital account.

1345. The beneficiary of the fruits and revenues is entitled to the net income of the administered property from the date determined in the act giving rise to the administration or, if no date is determined, from the date of the beginning of the administration or that of the death which opened it.

1346. Fruits and revenues payable periodically are counted day by day.

Dividends and distributions of a legal person are due from the date indicated in the declaration of distribution or, failing that, from the date of the declaration.

1347. At the extinction of his right, the beneficiary of the fruits and revenues is entitled to the fruits and revenues that have not been

paid to him and to the portion earned but not yet collected by the administrator.

He is not entitled, however, to the dividends of a legal person that were not declared during the period his right existed.

SECTION VII

ANNUAL ACCOUNT

1348. An administrator shall render a summary account of his administration to the beneficiary at least once a year.

1349. The account shall be sufficiently detailed to allow verification of its accuracy.

Any interested person may, on a rendering of account, apply to the court to order the account verified by an expert.

1350. Where there are several administrators, they shall render one and the same account unless their duties have been divided by law, the act or the court, and the division has been made accordingly.

1351. An administrator shall at all times allow the beneficiary to examine the books and vouchers relating to the administration.

CHAPTER IV

TERMINATION OF ADMINISTRATION

SECTION I

CAUSES TERMINATING ADMINISTRATION

1352. The duties of an administrator terminate upon his death, resignation or replacement or his becoming bankrupt or being placed under protective supervision.

The duties of an administrator are also terminated where the beneficiary becomes bankrupt or is placed under protective supervision, if that affects the administered property.

1353. Administration is terminated

(1) By extinction of the right of the beneficiary in the administered property;

(2) By the expiry of the term or fulfilment of the condition stipulated in the act giving rise to the administration;

(3) By achievement of the object of the administration or disappearance of the cause that gave rise to it.

1354. An administrator may resign by giving written notice to the beneficiary and, where such is the case, his co-administrators or the person empowered to appoint an administrator in his place. Where there are no such persons or where it is impossible to give notice to them, the notice shall be given to the Public Curator who shall, if necessary, assume the provisional administration of the property and cause a new administrator to be appointed in place of the administrator who has resigned.

The administrator of a private trust or social trust shall also notify his resignation to the person or body designated by law to supervise his administration.

1355. The resignation of the administrator takes effect on the date the notice is received or on any later date indicated in the notice.

1356. An administrator is liable for any damage caused by his resignation where it is submitted without a serious reason and at an inopportune moment or where it amounts to failure of duty.

1357. A beneficiary who has entrusted the administration of property to another person may replace the administrator or terminate the administration, particularly by exercising his right to require that the property be returned to him on demand.

Any interested person may apply for the replacement of an administrator who is unable to discharge his duties or does not fulfil his obligations.

1358. Upon the death of an administrator, the liquidator of his succession, if he is aware of the administration, is bound to give notice of the death to the beneficiary and to the co-administrators, if any, or, in the case of a private trust or social trust, to the person or body designated by law to supervise the administration.

The liquidator is also bound, in respect of any matter already begun, to do all that is immediately necessary to prevent a loss; he shall also render account and deliver over the property to those entitled to it.

1359. Obligations contracted towards third persons in good faith by an administrator who is unaware that his administration has terminated are valid and bind the beneficiary or the trust patrimony; the same rule applies to obligations contracted by the administrator after the end of the administration that are its necessary consequence or are required to prevent a loss.

The beneficiary or the trust patrimony is also bound by the obligations contracted towards third persons who were unaware that the administration had terminated.

SECTION II

RENDERING OF ACCOUNT AND DELIVERY OF PROPERTY

1360. On the termination of his administration, an administrator shall render a final account of his administration to the beneficiary and, where that is the case, to the administrator replacing him or to his co-administrators. Where there are several administrators and their duties are terminated simultaneously, they shall render one and the same account, except where their duties are divided.

The account shall be sufficiently detailed to allow verification of its accuracy; the books and other vouchers pertaining to the administration may be consulted by interested persons.

The acceptance of the account by the beneficiary closes the account.

1361. An administrator may at any time and with the consent of all the beneficiaries render account by agreement.

If the account is not rendered by agreement, the rendering of account is made judicially.

1362. An administrator shall deliver over the administered property at the place agreed upon or, failing that, where it is.

1363. An administrator shall deliver over all that he has received in the performance of his duties, even if what he has received was not due to the beneficiary or to the trust patrimony; he is also accountable for any personal profit or benefit he has realized by using, without authorization, information he had obtained by reason of his administration.

Where an administrator has used property without authorization, he is bound to compensate the beneficiary or the trust patrimony for his use by paying an appropriate rent or the interest on the money.

1364. Administration expenses, including the cost of rendering account and delivering the property, are borne by the beneficiary or the trust patrimony.

The resignation or replacement of the administrator binds the beneficiary or the trust patrimony to pay him, apart from the administration expenses, any remuneration he has earned.

1365. An administrator owes interest on the balance from the close of the final account or the formal notice to produce it; the beneficiary or the trust patrimony owes interest only from the formal notice.

1366. An administrator is entitled to deduct from the sums he is required to remit anything the beneficiary or the trust patrimony owes him by reason of the administration.

An administrator may detain the administered property until payment of what is owed to him.

1367. Where there are several beneficiaries, their obligation towards the administrator is joint and several.

BOOK FIVE

OBLIGATIONS

TITLE ONE

OBLIGATIONS IN GENERAL

CHAPTER I

GENERAL PROVISIONS

1368. It is of the essence of an obligation that there be persons between whom it exists, a prestation which forms its object, and an objective and impersonal cause which justifies its existence.

1369. An obligation arises from contract or from any act or fact to which the effects of an obligation are attached by law.

An obligation may be pure and simple or subject to modalities.

1370. The object of an obligation is the prestation that the debtor is bound to render to the creditor and which consists in doing or not doing something.

The prestation must be possible and determinate or determinable; it must neither be forbidden by law nor contrary to public order.

1371. The prestation may relate to any property, even future property, provided that the property is determinate as to kind and determinable as to quantity.

1372. Good faith must govern the conduct of the parties both at the time the obligation is created and at the time it is performed or extinguished.

1373. The rules set forth in this Book apply to the state and to the bodies, corporations, partnerships, agents and mandataries of the state, as well as to all other legal persons established in the public interest, subject to any other rules of law which may be applicable to them.

CHAPTER II

CONTRACTS

SECTION I

GENERAL PROVISIONS

1374. The general rules set out in this chapter apply to all contracts, regardless of their nature.

Special rules established under Title Two of this Book relating to certain contracts may also apply.

SECTION II

NATURE AND CERTAIN CLASSES OF CONTRACTS

1375. A contract is an agreement of wills by which one or several persons obligate themselves to one or several other persons to perform a prestation.

Contracts may be divided into contracts of adhesion and contracts by mutual agreement, synallagmatic and unilateral contracts, onerous

and gratuitous contracts, commutative and aleatory contracts, and contracts of instantaneous performance or of successive performance; they may also be consumer contracts.

1376. A contract of adhesion is a contract in which the essential stipulations were imposed or drawn up by one of the parties, on his behalf or upon his instructions, and were not negotiable.

Any contract that is not a contract of adhesion is a contract by mutual agreement.

1377. A contract is synallagmatic, or bilateral, when the parties obligate themselves reciprocally, each to the other, so that the obligation of one party is correlative to the obligation of the other.

When one party obligates himself to the other without any obligation on the part of the latter, the contract is unilateral.

1378. A contract is onerous when each party obtains an advantage in return for his obligation.

When one party obligates himself to the other for the benefit of the latter without obtaining any advantage in return, the contract is gratuitous.

1379. A contract is commutative when, at the time it is formed, the extent of the obligations of the parties and of the advantages obtained by them in return is certain and determinate.

When the extent of the obligations or of the advantages is uncertain, the contract is aleatory.

1380. Where the circumstances do not preclude the performance of the obligations of the parties at one single time, the contract is a contract of instantaneous performance.

Where the circumstances absolutely require that the obligations be performed at several different times or without interruption, the contract is a contract of successive performance.

1381. A consumer contract is a contract governed by the Consumer Protection Act whereby one of the parties, being a natural person, the consumer, acquires, leases, borrows or obtains in any other manner property or services from the other party, who offers such property and services as part of an enterprise which he carries on.

SECTION III

FORMATION OF CONTRACTS

§ 1.—*Conditions of formation of contracts*

I — General provisions

1382. A contract is formed by the sole exchange of consents between persons having capacity to contract, unless compliance with a certain form is imposed by the parties or by law as a necessary condition of its formation.

It is of the essence of a contract that it have a cause and an object.

II — Consent

1. Exchange of consents

1383. The exchange of consents is accomplished by the express or tacit manifestation of the will of a person to accept an offer to contract made to him by another person.

An offer to contract is a proposal which contains all the essential elements of the proposed contract and in which the offeror signifies his willingness to be bound if it is accepted.

1384. A contract is formed when and where acceptance is received by the offeror, regardless of the method of communication used, and even though the parties have agreed to reserve agreement as to secondary terms.

2. Offer and acceptance

1385. An offer to contract derives from the person who initiates the contract or the person who determines its content or even, in certain cases, the person who presents the last essential element of the proposed contract.

1386. An offer to contract may be made to a determinate or an indeterminate person, and a term for acceptance may or may not be attached to it.

Where a term is attached, the offer cannot be revoked before the term expires; if none is attached, the offer may be revoked at any time before acceptance is received by the offeror.

1387. Where the offeree receives a revocation before the offer, the offer lapses, even though a term is attached to it.

1388. An offer lapses if no acceptance is received by the offeror before the expiry of the specified term or, where no term is specified, before the expiry of a reasonable time; it also lapses in respect of the offeree if he has rejected it.

The death or bankruptcy of the offeror or the offeree, whether or not a term is attached to the offer, or the institution of protective supervision in respect of either of them also causes the offer to lapse, if that event occurs before acceptance is received by the offeror.

1389. Acceptance which does not correspond substantially to the offer or which is received by the offeror after the offer has lapsed does not constitute acceptance.

It may, however, constitute a new offer.

1390. Silence does not imply acceptance of an offer, subject only to the will of the parties, the law or special circumstances, such as usage or prior business relationship.

1391. The offer of a reward made to anyone who performs a particular act is binding on the offeror, even if the person who performs the act does not know of the offer, unless, in cases which admit of it, the offer was previously revoked expressly and adequately by the offeror.

1392. An offer to contract made to a determinate person with a term for acceptance attached constitutes a promise to form the proposed contract from the moment that the offeree clearly indicates to the offeror that he intends to consider the offer.

A mere promise is not equivalent to the proposed contract; however, where the beneficiary of the promise accepts the promise or takes up his option, both he and the promisor are bound to form the contract.

1393. A contract made in violation of a promise to contract may be set up against the beneficiary of the promise, but without affecting his remedy for damages against the promisor and the person having contracted in bad faith with the promisor.

The same rule applies to a contract made in violation of a first refusal agreement, also called a promise of first option.

3. Qualities and defects of consent

1394. Consent must be given by a person who, at the time of manifesting such consent, either expressly or tacitly, is capable of binding himself.

If there is no consent, the contract is absolutely null.

1395. Consent must be free and enlightened.

It be vitiated by error, fear or lesion.

1396. Error vitiates consent of the parties or of one of them where it relates to the nature of the contract, the object of the prestation or any essential elements that was determining for consent.

An inexcusable error does not constitute a defect of consent.

1397. Error on the part of one party induced by fraud committed by the other party or with his knowledge vitiates consent whenever, but for that error, the party would not have contracted, or would have contracted on different terms.

Fraud may result from silence or concealment.

1398. In a consumer contract, the consumer's consent is presumed to be vitiated by fraud committed by the other contracting party where a practice prohibited under the Consumer Protection Act was used in relation with the contract.

1399. Fear of serious injury to the person or property of one of the parties vitiates consent given by that party where the fear is induced by violence or threat exerted by or known to the other party.

Apprehended injury may also relate to another person or his property and is appraised according to the circumstances.

1400. Fear induced by the abusive exercise of a right or power or by the threat of such exercise vitiates consent.

1401. Consent to a contract the object of which is to deliver the person making it from fear of serious injury is not vitiated where the other contracting party, although aware of the state of necessity, is acting in good faith.

1402. Lesion vitiates consent only in certain cases specifically provided by law or in respect of certain persons such as minors and persons of full age under tutorship or curatorship.

1403. A person whose consent is vitiated has the right to apply for annulment of the contract; in the case of error occasioned by fraud, of fear induced by violence or of lesion, he may, in addition to annulment, also claim damages or, where he prefers that the contract be maintained, apply for a reduction of his obligation equivalent to the damages he would be justified in claiming.

1404. In the case of a demand for the annulment of a contract on the ground of lesion, the court may maintain the contract where the defendant offers a reduction of his claim or an equitable pecuniary supplement.

III — Capacity to contract

1405. The rules relating to the capacity to contract are laid down principally in Book One, Persons.

IV — Cause of contracts

1406. The cause of a contract is the subjective and personal reason that determines each of the parties to form the contract.

The cause need not be expressed.

1407. A contract for a cause prohibited by law or contrary to public order is absolutely null.

V — Object of contracts

1408. The object of a contract is the juridical act envisaged by the parties at the time of its formation.

1409. A contract for an object prohibited by law or contrary to public order is absolutely null.

VI — Form of contracts

1410. Where a particular form is required as a necessary condition of formation of a contract, it must be observed; it must be observed for modifications to the contract as well, unless they are only accessory stipulations.

1411. A promise to enter into a contract is not subject to the particular form, if any, required for the contract.

§ 2.—*Sanction of conditions of formation of contracts*

I — Nature of nullity

1412. Any contract which does not meet the necessary conditions of its formation may be annulled.

1413. A contract is absolutely null where the condition of formation sanctioned by its nullity is essential or is necessary for the protection of the general interest.

1414. The absolute nullity of a contract may be invoked by any person having a present and actual interest in doing so; it is raised by the court of its own motion.

A contract that is absolutely null cannot be confirmed.

1415. A contract is relatively null where the condition of formation sanctioned by its nullity is necessary for the protection of a special interest, such as where the consent of the parties or of one of them is vitiated.

1416. The relative nullity of a contract can only be invoked by the person in whose interest it is established or by the other contracting party, provided he is acting in good faith and sustains serious injury therefrom; it cannot be raised by the court of its own motion.

A contract that is relatively null may be confirmed.

1417. Unless the nature of the nullity is clearly indicated in the law, a contract which does not meet the necessary conditions of its formation is presumed to be relatively null.

II — Effect of nullity

1418. A contract that is null is deemed never to have existed.

In such a case, each party is bound to restore to the other the prestations he has received.

III — Confirmation of the contract

1419. The confirmation of a contract results from the express or tacit will to renounce the invocation of its nullity.

The will to confirm must be certain and evident.

1420. Where the nullity of a contract may be invoked by each of the parties or by several of them against a common opposite party to the contract, confirmation by one of them does not prevent the others from invoking nullity.

SECTION IV

INTERPRETATION OF CONTRACTS

1421. The common intention of the parties rather than adherence to the literal meaning of the words must be sought in interpreting a contract.

1422. In interpreting a contract, the nature of the contract, the circumstances in which it was formed, the interpretation which has already been given to it by the parties or which it may have received, and usage, must all be taken into account.

1423. Each clause of a contract must be interpreted in light of the others so that each is given the meaning derived from the contract as a whole.

1424. A clause must be given a meaning that gives it some effect rather than one that gives it no effect.

1425. Words susceptible of two meanings must be given the meaning that best conforms to the subject matter of the contract.

1426. A clause intended to eliminate doubt as to the application of the contract to a specific situation does not restrict the scope of a contract otherwise expressed in general terms.

1427. The clauses of a contract cover only what it appears that the parties intended to include, however general the terms used.

1428. In case of doubt, a contract must be interpreted in favour of the debtor and against the creditor of the obligation, unless the creditor was obliged to adhere to it or is a consumer.

SECTION V

EFFECTS OF CONTRACTS

§ 1.—*Effects of contracts between the parties*

I — General provisions

1429. A contract creates obligations and, in certain cases, modifies or extinguishes them.

In some cases, it also has the effect of transferring real rights.

II — Binding force and content of contracts

1430. A contract validly formed binds the parties who have formed it not only as to what they have expressed in it but also as to what is incident to it according to its nature and in conformity with usage, equity or law.

1431. An external clause referred to in a contract is binding on the parties.

In a consumer contract or a contract of adhesion, however, an external clause is null if, at the time of formation of the contract, it was not expressly brought to the attention of the consumer or adhering party, unless the other party proves that the consumer or adhering party knew of it or that the clause was in common use.

1432. In a consumer contract or a contract of adhesion, a clause which is illegible or incomprehensible to a reasonable person is null if the consumer or the adhering party suffers injury therefrom, unless the other party proves that the clause was expressly brought to the attention of the consumer or adhering party and that an adequate explanation of its nature and scope was given to him.

1433. An abusive clause in a consumer contract or a contract of adhesion is null, or the obligation arising from it may be reduced.

An abusive clause is a clause which, in the course of performance of the contract, is excessively and unreasonably detrimental to the consumer or the adhering party and is therefore not in good faith; a clause which so departs from the fundamental obligations which normally arise from the nature of the contract or from the rules of law governing it that it changes the nature of the contract is presumed to be an abusive clause.

1434. A clause which is null does not cause the contract to be invalid in other respects, unless it is apparent that the contract must be considered as an indivisible whole.

The same applies to a clause without effect or deemed to be unwritten.

1435. A contract cannot be resolved, resiliated, modified or revoked except on grounds recognized by law or by agreement of the parties.

§ 2.—*Effects of contracts with respect to third persons*

I — General provisions

1436. A contract has effect only between the contracting parties; it does not affect third persons, except where provided by law.

1437. Upon the death of one of the parties, the rights and obligations arising from a contract pass to his heirs.

1438. The rights of the parties to a contract pass to their successors by particular title if they are accessory to property which passes to them or are directly related to it.

II — Promise for another

1439. No person can bind anyone but himself and his heirs by a contract made in his own name, but he may promise in his own name that a third person will perform an obligation, and in that case he is liable to reparation for injury to the other contracting party if the third person fails to perform the obligation as promised.

III — Stipulation for another

1440. A person may make a stipulation in a contract for the benefit of a third person.

The stipulation gives the third person beneficiary the right to exact performance of the promised obligation directly from the promisor.

1441. A third person beneficiary need not exist nor be determinate when the stipulation is made; he need only be determinable at that time and exist when the promisor is to perform the obligation for his benefit.

1442. The stipulation may be revoked as long as the third person beneficiary has not advised the stipulator or the promisor of his will to accept it.

1443. Only the stipulator may revoke a stipulation; neither his heirs nor his creditors may do so.

If the promisor has an interest in maintaining the stipulation, however, the stipulator cannot revoke it without his consent.

1444. Revocation of the stipulation has effect as soon as it is made known to the promisor; if it is made by will, however, it has effect upon the opening of the succession.

Where a new beneficiary is not designated, revocation benefits the stipulator or his heirs.

1445. A third person beneficiary or his heirs may validly accept the stipulation, even after the death of the stipulator or promisor.

1446. A promisor may set up against the third person beneficiary such defenses as he could have set up against the stipulator.

IV — Simulation

1447. Simulation exists where the parties agree to express their true intent, not in an apparent contract, but in a secret contract, also called a counter letter.

Between the parties, a counter letter prevails over an apparent contract.

1448. Third persons in good faith may, according to their interest, avail themselves of the apparent contract or the counter letter; however, where conflicts of interest arise between them, preference shall be given to the person who avails himself of the apparent contract.

§ 3.—*Special effects of certain contracts*

I — Transfer of real rights

1449. The transfer of a real right in a certain and determinate movable property, or in several movable properties considered as a

universality, vests the acquirer with the right upon the formation of the contract, even though the property is not delivered immediately and the price remains to be determined.

The transfer of a real right in a movable property determined only as to kind vests the acquirer with that right as soon as he is notified that the movable property is certain and determinate.

1450. If a party transfers the same real right in the same movable property to different acquirers successively, the acquirer in good faith who is first given possession of the property is vested with the real right in that property, even though his title may be later in date.

1451. The transfer of a real right in an immovable property vests the acquirer with that right upon the formation of the contract; however, it cannot be set up against third persons except according to the rules concerning the publication of rights.

II — Fruits and risks incident to property

1452. The allocation of fruits and the assumption of risks incident to property forming the object of a real right transferred by contract are principally governed by Book Four, Property.

The debtor of the obligation to deliver the property shall continue, however, to assume the risks attached to the property until it is delivered.

CHAPTER III

CIVIL LIABILITY

SECTION I

CONDITIONS OF LIABILITY

§ 1.—*General provisions*

1453. Every person has a duty to abide by the rules of conduct which rest upon him, according to the circumstances, usage or law, so as not to cause injury to another.

Where, by his fault, he fails in this duty, he is responsible for any bodily, moral or material injury he causes to another and is liable to reparation for the injury.

He is also liable, in certain cases, to reparation for injury caused to another by the act or fault of another person or by the action of property in his custody.

1454. Every person has a duty to honour his contractual undertakings.

Where he fails in this duty, he is responsible for any bodily, moral or material injury he causes to the other contracting party and is liable to reparation for the injury; neither he nor the other party may in such a case elude the rules governing contractual liability by opting for rules that would be more profitable to them, but in the case of bodily injury, only the rules governing extracontractual liability apply.

§ 2.—*Act or fault of another*

1455. A person having parental authority is liable to reparation for injury caused to another through the act or fault of the minor under his authority, unless he proves that he himself did not commit any fault with regard to the custody, supervision or education of the minor.

A person deprived of parental authority is liable in the same manner, if the act or fault of the minor is related to the education he has given to him.

1456. A person who, without having parental authority, is entrusted, by delegation or otherwise but not purely by accident, with the custody, supervision or education of a minor is liable, in the same manner as the person having parental authority, to reparation of injury caused through the act or fault of the minor.

Where he is acting gratuitously or for only nominal remuneration, however, he is not liable unless it is proved that he is guilty of a fault.

1457. A person having custody of a person of full age who is not endowed with reason is liable to reparation for injury caused by the act of the person of full age.

However, the tutor to a person of full age, the person exercising custody of a person of full age whose tutor or curator is the Public Curator, and the mandatary performing a mandate given by a person of full age for the eventuality of his inability, are not liable to reparation for injury caused to another through the act or fault of the person of full age, unless they are guilty of a deliberate or gross fault in exercising custody.

1458. Persons not endowed with reason, whether minors or of full age, are not responsible for injury they cause to others through conduct which would otherwise be wrongful.

1459. The principal is liable to reparation for injury caused by the fault of his servants in the performance of their duties; nevertheless, he retains his remedies against them.

1460. A servant of the state or of a legal person established for a public interest does not cease to act in the performance of his duties by the mere fact that he performs an act that is illegal, unauthorized or outside his competence, or by the fact that he is acting as a peace officer.

§ 3.—*Action of property*

1461. A person entrusted with the custody of property is liable to reparation for injury resulting from the action of the property, unless he proves that he is not at fault.

1462. The owner of an animal is liable to reparation for injury it has caused, whether the animal was under his custody or that of a third person, or had strayed or escaped.

A person making use of the animal is, together with the owner, responsible for it during that time.

1463. The owner of an immovable is liable to reparation for injury caused by its ruin, even partial, where this has happened from lack of repair or from a defect of construction.

1464. The manufacturer of a movable property is liable to reparation for injury caused to another person by reason of a safety defect in the property, even if it is incorporated with or placed in an immovable for the service or operation of the immovable.

The same rule applies to a person who distributes the property under his name or as his own and to any supplier of the movable property, whether a wholesaler or a retailer.

1465. Property has a safety defect where, having regard to all the circumstances, it does not afford the safety which a person is normally entitled to expect, particularly by reason of a defect in the design or manufacture of the property, poor preservation or presentation of the property, or the lack of sufficient indications as to the risks and dangers it involves or as to safety precautions.

SECTION II

CERTAIN CASES OF EXEMPTION FROM LIABILITY

1466. A person may free himself from his liability for injury caused to another by proving that the injury results from superior force, unless he has undertaken to make reparation for it.

A superior force is an unforeseeable and irresistible event, including external causes with the same characteristics, such as the fault of the victim or of a third person.

1467. Where a person comes to the assistance of another person or, for an unselfish motive, disposes, free of charge, of property for the benefit of another person, he is exempt from all liability for injury that may result from it, unless the injury is due to his intentional or gross fault.

1468. A person may free himself from his liability for injury caused to another as a result of the disclosure of a trade secret by proving that considerations of general interest prevailed over keeping the secret and, particularly, that its disclosure was justified for reasons of public health or safety.

1469. The manufacturer, distributor or supplier of a movable property is not liable to reparation for injury caused by a safety defect in the property if he proves that the victim knew or could have known of the defect, or could have foreseen the injury.

Nor is he liable to reparation if he proves that, according to the state of knowledge at the time that he manufactured, distributed or supplied the property, the existence of the defect could not have been known, or that he was not neglectful of his duty to provide information when he became aware of the defect.

1470. A person cannot exclude or limit his liability for material injury caused to another through an intentional or gross fault; a gross fault is a fault which shows rash behaviour or gross carelessness or negligence.

He cannot in any way exclude or limit his liability for bodily or moral injury caused to another.

1471. A notice, whether posted or not, stipulating the exclusion or limitation of the obligation to make reparation for injury resulting from the nonperformance of a contractual obligation has effect, in respect of the creditor, only if the party who invokes the notice proves

that the other party could have been aware of its existence at the time the contract was formed.

1472. A person cannot by way of a notice exclude or limit his obligation to make reparation in respect of third persons; such a notice may, however, constitute a warning of a danger.

1473. The assumption of risk by the victim, although it may be considered imprudent having regard to the circumstances, cannot constitute an agreement of non-liability.

SECTION III

APPORTIONMENT OF LIABILITY

1474. Where an injury has been caused by several persons, liability is shared by them in proportion to the seriousness of the fault of each.

The victim is included in the apportionment when the injury is partly the effect of his own fault.

1475. A person who is liable to reparation for an injury is not liable in respect of any aggravation of the injury that the victim could have avoided.

1476. Where several persons have jointly taken part in a wrongful act which has resulted in injury or have committed separate faults each of which may have caused the injury, and where it is impossible to determine, in either case, which of them actually caused it, they are solidarily responsible, although imperfectly.

1477. Where an injury has been caused by several persons and one of them is exempted from all liability by an express provision of a special Act, the obligation he would have had to make reparation is apportioned equally between the other persons liable for the injury and the victim.

CHAPTER IV

CERTAIN OTHER SOURCES OF OBLIGATIONS

SECTION I

MANAGEMENT OF THE BUSINESS OF ANOTHER

1478. Management of the business of another exists where a person, the manager, spontaneously and under no obligation to act, voluntarily and opportunely undertakes to manage the business of another, the principal, without his knowledge, or with his knowledge if he was unable to appoint a mandatary or otherwise provide for it.

1479. The manager shall as soon as possible inform the principal of the management he has undertaken.

1480. The manager is bound to continue the management undertaken until he can withdraw without risk of loss or until the principal, or his tutor or curator, or the liquidator of the succession, as the case may be, is able to provide for it.

The manager is in all other respects subject to the general obligations of an administrator of the property of another entrusted with simple administration, so far as they are not incompatible, having regard to the circumstances.

1481. The liquidator of the succession of the manager who is aware of the management is bound to do only what is necessary, in business already begun, to avoid loss; he shall immediately account to the principal.

1482. When the conditions of management of the business of another are fulfilled, even if the desired result has not been attained, the principal shall reimburse the manager for all the necessary or useful expenses he has incurred and indemnify him for any injury he has suffered by reason of his management and not through his own fault.

The principal shall also fulfil any necessary or useful obligations that the manager has contracted with third persons in his name or for his benefit.

1483. Expenses or obligations are assessed as to their necessity or usefulness at the time they were incurred or contracted by the manager.

1484. Disbursements made by the manager in respect of an immovable belonging to the principal are treated according to the rules established for those made by a possessor in good faith.

1485. A manager acting in his own name is bound towards third persons with whom he contracts, without prejudice to his or their remedies against the principal.

A manager acting in the name of the principal is bound towards third persons with whom he contracts only so far as the principal is not bound towards them.

1486. Management inopportunely undertaken by a manager is binding on the principal only to the extent of his enrichment.

SECTION II

RECEPTION OF A THING NOT DUE

1487. A person who receives a payment made in error, or merely to avoid injury to the person making it while protesting that he owes nothing, is obliged to restore it.

He is not obliged to restore it, however, where, in consequence of the payment, the claim of the person who received the undue payment in good faith is prescribed or the person has destroyed his title or relinquished a security, saving the remedy of the person having made the payment against the true debtor.

1488. Restitution of payments not due shall be made according to the rules of restitution of prestations.

SECTION III

UNJUSTIFIED ENRICHMENT

1489. A person who is enriched at the expense of another shall, to the extent of his enrichment, indemnify the other for his correlative impoverishment, if there is no justification for the enrichment or the impoverishment.

1490. Enrichment or impoverishment is justified where it derives from the performance of an obligation, from the failure of the person impoverished to exercise a right of which he can avail himself or could have availed himself against the person enriched, or from an

act performed by the person impoverished for his personal and exclusive interest or at his own risk and peril, or with a constant liberal intention.

1491. An indemnity is due only if the enrichment continues to exist on the day of the demand.

Both the value of the enrichment and that of the impoverishment are assessed on the day of the demand; however, where the circumstances indicate the intent of the person enriched to benefit unreasonably from the onerous act of another, the enrichment may be assessed at the time the person was enriched.

1492. Where the person enriched disposes of his enrichment gratuitously, with no intention of defrauding the person impoverished, the action of the person impoverished may be taken against the third person beneficiary if the latter could have known of the impoverishment.

CHAPTER V

MODALITIES OF OBLIGATIONS

SECTION I

SIMPLE MODALITIES

§ 1.—*Conditional obligations*

1493. An obligation is conditional where it is made to depend upon a future and uncertain event, either by suspending its rise until the event occurs or is certain not to occur, or by making its extinguishment dependent on whether or not the event occurs.

1494. An obligation is not conditional if its rise or extinguishment depends on an event that, unknown to the parties, had already occurred at the time that the debtor obligated himself conditionally; the obligation has effect or is extinguished from that time.

1495. A condition on which an obligation depends must be possible and must be neither unlawful nor contrary to public order; otherwise, it is null and renders null an obligation that is dependent on it.

1496. An obligation dependent for its rise on a condition that is at the sole discretion of the debtor is null; however, if the condition

consists in doing or not doing something, the obligation is valid, even where the act is at the discretion of the debtor.

1497. If no time has been fixed for fulfillment of a condition, the condition may be fulfilled at any time; the condition fails, however, if it becomes certain that it will not be fulfilled.

1498. Where an obligation is dependent on the condition that an event will not occur within a given time, the condition is considered fulfilled once the time has elapsed without the event having occurred, and also when, before the time has elapsed, it becomes certain that the event will not occur.

Where no time has been fixed, the condition is not considered fulfilled until it becomes certain that the event will not occur.

1499. A conditional obligation becomes absolute when the debtor whose obligation is subject to the condition prevents it from being fulfilled.

1500. The creditor, pending fulfillment of the condition, may take any useful measures to preserve his rights.

1501. The conditional nature of an obligation does not prevent it from being transferable or transmissible.

1502. The fulfillment of a condition has a retroactive effect, between the parties and with respect to third persons, to the day on which the debtor obligated himself conditionally.

1503. The fulfillment of a suspensive condition obliges the debtor to perform the obligation, as though it had existed from the day on which he obligated himself under that condition.

The fulfillment of a resolutory condition obliges each party to return to the other the prestations he has received pursuant to the obligation, as though the obligation had never existed.

§ 2.—*Obligations with a term*

1504. An obligation with a suspensive term is an existing obligation that does not become exigible until the occurrence of a future and certain event.

1505. Where the obligation does not become exigible until the expiry of a period of time but no specific date is mentioned, the first day of the period is not counted, but the day of its expiry is counted.

1506. If an event that was considered certain does not occur, the obligation is exigible from the day on which the event normally should have occurred.

1507. A term is for the benefit of the debtor, unless it is apparent from the law, the intent of the parties or the circumstances that it has been stipulated for the benefit of the creditor or both parties.

The party for whose exclusive benefit a term has been stipulated may renounce it, without the consent of the other party.

1508. Where the parties have agreed to delay the determination of the term or to leave it to one of them to make such determination and where, after a reasonable time, no term has been determined, the court may, upon the application of one of the parties, fix the term according to the nature of the obligation, the situation of the parties and the circumstances.

The court may also fix the term where a term is required by the nature of the obligation and there is no agreement as to how it may be determined.

1509. What is due with a term cannot be exacted before the term expires, but anything performed freely and without error before the expiry of the term cannot be recovered.

1510. A debtor loses the benefit of the term if he becomes insolvent, is declared bankrupt, or, by his own act and without the consent of the creditor, reduces the security he has given to him.

He also loses the benefit of the term if he fails to meet the conditions in consideration of which it was granted to him.

1511. Renunciation of the benefit of the term or forfeiture of the term renders the obligation exigible immediately.

1512. Forfeiture of the term incurred by one of the debtors, even a solidary debtor, cannot be set up against the other co-debtors.

1513. An obligation with an extinctive term is an obligation which has a duration fixed by law or by the parties and which is extinguished by expiry of the term.

SECTION II

COMPLEX MODALITIES

§ 1.—*Obligations with multiple persons*

I — Joint, divisible and indivisible obligations

1514. An obligation is joint between two or more debtors where they are obligated to the creditor for the same thing but in such a way that each debtor can only be compelled to perform the obligation separately and only up to his share of the debt.

An obligation is joint between two or more creditors where each creditor can only exact the performance of his share of the claim from the common debtor.

1515. An obligation is divisible by operation of law, unless it is expressly stipulated that it is indivisible or unless the object of the obligation, owing to its nature, is not susceptible of division either materially or intellectually.

1516. An indivisible obligation is not susceptible of division, either between the creditors or the debtors or between their heirs.

Each of the debtors or of his heirs may separately be compelled to perform the whole obligation and, conversely, each of the creditors or of his heirs may exact the performance of the whole obligation, even though the obligation is not solidary.

1517. A stipulation of solidarity does not make an obligation indivisible.

1518. A divisible obligation binding only one debtor and one creditor must be performed between them as if it were indivisible, but it remains divisible between the heirs.

II — Solidary obligations

1. Solidarity between debtors

1519. An obligation is solidary between the debtors where they are obligated to the creditor for the same thing in such a way that each of them may be compelled separately to perform the whole obligation and where performance by a single debtor releases the others towards the creditor.

1520. An obligation may be solidary even though one of the co-debtors is obliged differently from the others to perform the same thing, such as where one is conditionally bound while the obligation of the other is not conditional, or where one is allowed a term which is not granted to the other.

1521. Solidarity between debtors is not presumed; it exists only where it is expressly stipulated by the parties or imposed by law.

Notwithstanding the foregoing, solidarity between debtors is presumed where an obligation is contracted for the service or carrying on of an enterprise.

1522. The obligation to make reparation for injury caused to another person through the fault of two persons or more is solidary where the obligation is extra-contractual.

1523. Solidarity between debtors may be perfect or imperfect.

1524. Solidarity is perfect where the debtors are bound towards the creditor by virtue of the same juridical act or fact and are, for that reason, considered to represent each other in everything relating to the obligation.

Solidarity is imperfect where the debtors are bound towards the creditor by virtue of different juridical acts or facts and where they are, for that reason, considered to represent each other only with regard to acts that do not increase the obligation of the other co-debtors.

1525. Where specific performance of a contractual obligation has become impossible through the fault of one or more of the solidary debtors, or after he or they have been put in default, the other co-debtors are not released from their obligation to make an equivalent payment to the creditor, but they are not liable for additional damages which may be owed to him.

The creditor cannot claim additional damages except from those co-debtors through whose fault the obligation became impossible to perform, and from those who were then in default.

1526. The creditor of a solidary obligation may apply for payment to any one of the co-debtors at his option, without such debtor having a right to plead the benefit of division.

1527. Proceedings instituted against one of the solidary debtors do not deprive the creditor of his remedy against the others, but the debtor sued may implead the other solidary debtors.

1528. A solidary debtor who is sued by his creditor may set up all the defenses against him that are personal to him or that are common to all the co-debtors, but he cannot set up defenses that are purely personal to one or several of the other co-debtors.

1529. Where, through the act of the creditor, a solidary debtor is deprived of a security or of a right which he could have set up by subrogation, he is released to the extent of the value of the security or right of which he is deprived.

1530. A creditor who renounces solidarity in favour of one of the debtors retains his solidary remedy against the other debtors for the whole debt.

1531. A creditor who receives separately and without reserve the share of one of the solidary debtors and specifies in the acquittance that it applies to that share renounces solidarity in favour of that debtor alone.

1532. Where a creditor receives separately and without reserve the share of one of the debtors in the periodic payments or interest on the debt and specifies in the acquittance that it applies to his share, he loses his solidary remedy against that debtor for the periodic payments or interest due, but not for any that may become due in the future, nor for the capital, unless separate payment is continued for three consecutive years.

1533. A creditor who sues a solidary debtor for his share loses his solidary remedy against him if the debtor acquiesces in the demand or is condemned by judgment.

1534. A solidary debtor who has performed the obligation cannot recover from his co-debtors more than their respective shares, although he is subrogated to the rights of the creditor.

1535. Contribution to the payment of a solidary obligation is made by equal shares among the solidary debtors, unless their interests in the debt, including their shares of the obligation to make reparation for injury caused to another, are unequal, in which case their contributions are proportional to the interest of each in the debt.

However, if the obligation was contracted in the exclusive interest of one of the debtors or if it is due to the fault of one co-debtor alone, he is liable for the whole debt to the other co-debtors, who are then considered, in his regard, as his sureties.

1536. A loss arising from the insolvency of a solidary debtor is equally divided between the other co-debtors, unless their interests in the debt are unequal.

A creditor who has renounced solidarity in favour of one debtor, however, bears the share of that debtor in the contribution.

1537. A solidary debtor sued for reimbursement by the co-debtor who has performed the obligation may raise any common defenses that have not been set up by the co-debtor against the creditor, but he cannot set up any defenses which are personal to himself or which are purely personal to one or several of the other co-debtors.

1538. The obligation of a solidary debtor is divided by operation of law between his heirs.

2. Solidarity between creditors

1539. Solidarity between creditors exists only where it has been expressly stipulated.

It entitles each of them to exact the whole performance of the obligation from the debtor and to give a full acquittance for it.

1540. Performance of an obligation in favour of one of the solidary creditors releases the debtor towards the other creditors.

1541. A debtor has the option of performing the obligation in favour of any of the solidary creditors, provided he has not been sued by any of them.

A release from the obligation granted by one of the solidary creditors releases the debtor, but only for the portion of that creditor. The same rule applies to all cases in which the obligation is extinguished otherwise than by payment thereof.

1542. An obligation for the benefit of a solidary creditor is divided by operation of law between his heirs.

§ 2.—*Obligations with multiple objects*

I — Alternative obligations

1543. An alternative obligation is one which has two principal prestations as its object, the performance of either of which releases the debtor for the whole.

An obligation is not considered to be alternative if, when it arose, one of the prestations could not be the object of the obligation.

1544. The choice of the prestation belongs to the debtor, unless it has been expressly granted to the creditor.

Where, after being put in default, the party who has the choice of the prestation fails to exercise it within the time allotted to him to do so, the choice of the prestation passes to the other party.

1545. A debtor can neither perform nor be compelled to perform part of one prestation and part of the other.

1546. Where the debtor has the option and one of the prestations becomes impossible to perform, even through his own fault, he shall perform the one that remains.

If, in the same case, both prestations become impossible to perform and the impossibility of performing either of them is due to the fault of the debtor, he is liable to the creditor to the extent of the value of the last prestation remaining.

1547. Where the creditor has the option, he shall, if one of the prestations becomes impossible to perform, choose one of the remaining prestations unless the impossibility of performing it is due to the fault of the debtor, in which case the creditor has the right to exact specific performance of the remaining prestation or reparation, by equivalence, for the injury resulting from the nonperformance of the prestation that has become impossible.

If, in the same case, the prestations become impossible to perform and the impossibility of performing them is due to the fault of the debtor, the creditor may exact reparation, by equivalence, for the injury resulting from the nonperformance of one or another of the prestations.

1548. Where all the prestations become impossible to perform through no fault of the debtor, the obligation is extinguished.

II — Facultative obligations

1549. A facultative obligation is an obligation which has only one principal prestation as its object but from which the debtor may release himself by performing another prestation.

The debtor is released if the principal prestation, through no fault on his part, becomes impossible to perform.

CHAPTER VI

PERFORMANCE OF OBLIGATIONS

SECTION I

PAYMENT

§ 1.—*Payment in general*

1550. Payment means not only the turning over of a sum of money in satisfaction of an obligation, but also the actual performance of whatever forms the object of the obligation.

1551. Every payment presupposes an obligation; what has been paid where there is no obligation may be recovered.

Recovery is not admitted, however, in the case of natural obligations that have been voluntarily paid.

1552. Payment may be made by any person, even if he has no interest in the obligation; the creditor may be put in default by the offer of a third person to perform the obligation in the name of the debtor, provided the offer is made for the benefit of the debtor and not merely to change creditors.

A creditor cannot be compelled to take payment from a third person, however, if he has an interest in having the obligation performed by the debtor personally.

1553. To make a valid payment, a person must have a legal right in the thing due which entitles him to give it in payment.

However, payment of a sum of money or of any other thing due that is consumed by use cannot be recovered against a creditor who has used it in good faith, even though it was made by a person who was not authorized to make it.

1554. Payment must be made to the creditor or to the person authorized to receive it for him.

Payment made to a third person is valid if the creditor ratifies it; if it is not ratified, the payment is valid only to the extent of the benefit derived from it by the creditor.

1555. Payment made to a creditor without capacity to receive it is valid only to the extent of the benefit he derives from it.

1556. Payment made in good faith to the apparent creditor is valid, even though it is subsequently established that he is not the rightful creditor.

1557. Payment made by a debtor to his creditor to the detriment of a seizing creditor is not valid against the seizing creditor who, according to his rights, may compel the debtor to pay again; in that case, the debtor has a remedy against the creditor so paid.

1558. A creditor cannot be compelled to accept anything other than what is due to him, even though the thing offered is of greater value.

Nor can he be compelled to accept partial payment of an obligation unless the obligation is disputed in part. In that case, if the debtor offers to pay the undisputed part, the creditor cannot refuse to accept payment of it, but he preserves his right to claim the other part of the obligation.

1559. A debtor of a certain and determinate property is released by the handing over of the property in its actual condition at the time of payment, provided that the deterioration it has suffered is not due to his act or fault and did not occur after he was in default.

1560. Where the property is determinate as to its kind only, the debtor need not give one of the best quality, but he cannot offer one of the worst quality.

1561. Where the debt consists of a sum of money, the debtor is released by paying the nominal amount due in money which is legal tender at the time of payment.

He is also released by remitting the amount due by money order, by cheque made to the order of the creditor and certified by a financial institution carrying on business in Québec, or by any other similar instrument of payment, or by means of a credit card or a transfer of funds to an account of the creditor in a financial institution.

1562. Interest is paid at the agreed rate or, if none, at the legal rate.

1563. Payment must be made at the place expressly or impliedly fixed by the parties.

If no place is fixed by the parties, payment must be made at the domicile of the debtor, unless the thing due is a certain and determinate property, in which case payment must be made at the place where the property was when the obligation arose.

1564. The expenses attending payment shall be borne by the debtor.

1565. A debtor who pays his debt is entitled to an acquittance and to the surrender of the original title of the obligation, if any.

§ 2.—*Imputation of payment*

1566. When making payment, a debtor who owes several debts has the right to impute payment to the debt he intends to pay.

He cannot, however, without the consent of the creditor, impute payment to a debt not yet due in preference to a debt which has become due, unless it was agreed that payment may be made by anticipation.

1567. A debtor who owes a debt that bears interest or yields periodic payments cannot, without the consent of the creditor, impute a payment to the principal in preference to the interest or periodic payments.

Any partial payment made on the principal and interest is imputed first to the interest.

1568. Where a debtor who owes several debts has accepted an acquittance by which the creditor, at the time of payment, imputed payment to one specific debt, he cannot subsequently require that it be imputed to a different debt, except upon grounds for which contracts may be avoided.

1569. In the absence of imputation by the parties, payment is imputed first to the debt that is due.

Where several debts are due, payment is imputed to the debt which the debtor has the greatest interest in paying.

Where the debtor has the same interest in paying several debts, payment is imputed to the debt that became due first; if all of the debts became due at the same time, however, payment is imputed proportionately.

§ 3.—*Tender and deposit*

1570. Where a creditor refuses or neglects to accept payment, the debtor may make a tender.

A tender consists in placing the property which is due at the disposition of the creditor at the place and time that payment must be made. It must include, in addition to the property due, with the interest and periodic payments it has yielded, a reasonable amount to cover unliquidated expenses owed by the debtor, saving the right to make up any deficiency in that amount.

1571. Where the object tendered is a sum of money, it may be tendered in currency which is legal tender at the time of payment or by cheque made to the order of the creditor and certified by a financial institution carrying on business in Québec.

Tender may also be made by way of an irrevocable and unconditional undertaking, for an indefinite term, by a financial institution carrying on business in Québec, to pay to the creditor the amount tendered if the creditor accepts the tender or if the court declares it valid.

1572. Tender may be made by notarial deed *en minute* or by a declaration recorded in a pleading; it may also be made by any other writing or in any other manner, provided it is legally proved.

Where tender is made by notarial deed, the notary shall record the answer of the creditor in the deed and, in case of refusal, the reasons given by him.

1573. A tender of a sum of money or security made by declaration in a pleading must be completed by deposit of the sum or security, according to the rules of the Code of Civil Procedure.

1574. Where payment or delivery of the property must be made at the domicile of the debtor or at the place where the property is, the written notice given to the creditor by the debtor that he is ready to perform the obligation has the same effect as tender.

Where payment or delivery of the property need not be so made and it is difficult to transport the property to the place where it is to

be made, the debtor may, in writing, require the creditor to advise him of his willingness to accept the property, if he has reason to believe that the creditor will refuse it; if the creditor fails to advise the debtor of his willingness in due time, the debtor need not transport the property to the place where it must be paid or delivered and his notice to the creditor has the same effect as tender.

1575. Where the property which is due is a sum of money or a security, a written notice given by the debtor to the creditor that the sum of money or the security is deposited has the same effect as tender.

1576. A tender, or a notice having the same effect, must state the nature of the debt, the title under which it was created and the name of the creditor or the persons to whom payment is to be made; in addition, it must describe the property tendered and, in the case of a sum of money in cash, include an enumeration of each denomination.

1577. A creditor is in default by operation of law where, without justification, he refuses a valid tender or refuses to act on the notice having the same effect, or where he clearly expresses his intention to refuse any tender that the debtor may wish to make; in this last case, the debtor need not make any tender or give any notice having the same effect.

A creditor is also in default by operation of law where the debtor, despite his diligence, cannot find him.

1578. Where the creditor is in default, a debtor may take any measures necessary or useful for the preservation of the property which he owes and, in particular, entrust it to a third person for storage or custody.

In the same case, if the property is perishable, subject to rapid depreciation or expensive to preserve, the debtor may sell it and deposit the proceeds.

1579. A creditor who is in default shall bear the reasonable costs of preservation of the property, as well as any costs that may be incurred for the sale of the property and the deposit of the proceeds.

He shall also bear the risks of loss of the property by superior force.

1580. Deposit by the debtor of the sum of money or security which he owes is made in the Québec general deposit office or any trust

company or, during judicial proceedings, according to the rules of the Code of Civil Procedure.

Deposit may be made not only where the creditor refuses to accept the money or security owed by the debtor, but also, among other cases, where the claim is in dispute between several persons or where the debtor is prevented from making payment by reason of the fact that the creditor cannot be found at the place where the payment must be made.

1581. A debtor may withdraw a sum of money or a security which he has deposited, so long as it has not been accepted by the creditor; if he withdraws it, neither his co-debtors nor his sureties are released.

No withdrawal may be made during judicial proceedings, however, except by leave of the court.

1582. Where the deposit of a sum of money or of a security is declared valid by the court, the debtor cannot withdraw it except with the consent of the creditor.

The withdrawal cannot be made, however, if it would impair the rights of third persons or prevent the release of the co-debtors or the sureties of the debtor.

1583. A deposit made according to the conditions set forth in the preceding articles releases the debtor, for the future, from the payment of interest or income yielded.

1584. Interest or income yielded from the date of deposit belongs to the debtor. Nevertheless, where the deposit is made to obtain the performance of an obligation of the creditor that is correlative to the obligation the debtor intends to perform by the deposit, the interest or income belongs to the debtor until the deposit is accepted by the creditor.

1585. A tender accepted by the creditor or declared valid by the court is equivalent, in respect of the debtor, to payment made on the day of the tender or of the notice having the same effect, provided the debtor has always been willing to pay from that time.

1586. Where tender and deposit are accepted or declared valid by the court, the expenses related to them shall be borne by the creditor.

SECTION II

RIGHT TO ENFORCE PERFORMANCE

§ 1.—*General provisions*

1587. An obligation confers on the creditor the right to demand that the obligation be performed in full, properly and without delay.

Where the debtor fails to perform his obligation, without justification on his part, and if he is in default, the creditor may, without prejudice to his right to the performance of the obligation in full or in part by equivalence,

(1) force specific performance of the obligation;

(2) obtain, in the case of a contractual obligation, the resolution or resiliation of the contract or the reduction of his own correlative obligation;

(3) take any other measure provided by law to enforce his right to the performance of the obligation.

§ 2.—*Exception for nonperformance and right of retention*

1588. Where the obligations arising from a synallagmatic contract are exigible and one of the parties fails to perform his obligation to a substantial degree or does not offer to perform it, the other party may refuse to perform his own obligation to a corresponding degree, unless he is bound by law, the will of the parties or usage to perform first.

1589. A party who, with the consent of the other party, detains property belonging to the latter has a right to retain it pending full payment of his claim against him, if the claim is exigible and is directly related to the property he detains.

1590. The right of retention may be set up against anyone.

Involuntary dispossession does not extinguish a right of retention; the party exercising the right may revendicate the property in accordance with the Code of Civil Procedure, subject to the rules on prescription.

§ 3.—*Default*

1591. A debtor may be put in default by the terms of the contract itself, when it contains a stipulation that the mere lapse of time for performing it will have that effect.

A debtor may also be put in default by an extrajudicial demand addressed to him by his creditor to perform the obligation, a judicial demand filed against him or the sole operation of law.

1592. The extrajudicial demand by which a debtor is put in default must be in writing.

The demand must allow the debtor sufficient time for performance, having regard to the nature of the obligation and the circumstances; otherwise, the debtor may perform the obligation within a reasonable time after the demand.

1593. Where a creditor files a judicial demand against the debtor without his otherwise being in default, the debtor is entitled to perform the obligation within a reasonable time after the demand. If the obligation is performed within a reasonable time, the costs of the demand are borne by the creditor.

1594. A debtor is in default by the sole operation of law where the performance of the obligation would have been useful only within a certain time which he allowed to expire or where he failed to perform the obligation immediately despite the urgency that he do so.

A debtor is also in default by operation of law where he has violated an obligation not to do, or where specific performance of the obligation has become impossible through his fault, and also where he has made clear to the creditor his intention not to perform the obligation or where, in the case of an obligation of successive performance, he has refused or neglected to perform it, despite having been put in default repeatedly by the creditor.

1595. The creditor must prove the occurrence of one of the cases of default by operation of law notwithstanding any statement or stipulation to the contrary.

1596. Where solidarity between debtors is perfect, an extrajudicial demand by which the creditor puts one of the solidary debtors in default has effect with respect to the other debtors.

Similarly, an extrajudicial demand made by one of the solidary creditors has effect with respect to the other creditors.

1597. Where the object of the performance is a sum of money, the debtor, although he may be granted a delay of grace, is responsible for injury resulting from delay in the performance of the obligation from the moment he begins to be in default.

The debtor in such a case is also liable from the same moment for any loss resulting from superior force.

§ 4.—*Specific performance*

1598. A creditor may, in cases which admit of it, demand that the debtor be forced to make specific performance of the obligation.

1599. In case of default, the creditor may perform the obligation or cause it to be performed at the expense of the debtor.

A creditor wishing to avail himself of this right must so notify the debtor in the judicial or extrajudicial demand by which he puts him in default, except in cases where the debtor is in default by operation of law.

1600. The creditor may be authorized to destroy or remove, at the expense of the debtor, what has been made by the debtor in violation of an obligation not to do.

§ 5.—*Resolution or resiliation of contracts and reduction of obligations*

1601. Where the creditor does not avail himself of the right to force the specific performance of the contractual obligation of the debtor in cases which admit of it, he is entitled either to the resolution of the contract, or to its resiliation in the case of a contract of successive performance.

However and notwithstanding any stipulation to the contrary, he is not entitled to resolution or resiliation of the contract if the default of the debtor is of minor importance, unless, in the case of an obligation of successive performance, the default occurs repeatedly, but he is then entitled to a proportional reduction of his correlative obligation.

1602. In assessing the proportional reduction of the correlative obligation, all the relevant circumstances, particularly the condition of the parties at the time performance of the obligation begins and the patrimonial situation in which they could be if the reduction were granted, shall be taken into consideration.

If the obligation cannot be reduced, the creditor is entitled to damages only.

1603. A contract may be resolved or resiliated without judicial proceedings where the debtor is in default by operation of law or where he has failed to perform his obligation within the time allowed in the writing putting him in default.

1604. A contract which is resolved is deemed never to have existed; each party is, in such a case, bound to restore to the other the prestations he has already received.

A contract which is resiliated ceases to exist, but only for the future.

§ 6.—*Performance by equivalence*

I — General provisions

1605. The creditor is entitled to damages for bodily, moral or material injury which is an immediate and direct consequence of the debtor's default.

1606. The obligation of the debtor to pay damages to the creditor is neither reduced nor altered by the fact that the creditor receives a prestation from a third person, as a result of the injury he has sustained, except so far as the third person is subrogated to the rights of the creditor.

1607. An acquittance, transaction or statement obtained from the creditor in connection with bodily injury he has sustained, obtained by the debtor, an insurer or their representatives within thirty days of the act which caused the injury, is without effect.

1608. The right of a creditor to damages may be assigned or transmitted, except his right to claim punitive damages against the debtor where provided for by law.

II — Assessment of damages

1. Assessment in general

1609. The damages due to the creditor compensate for the amount of the loss he has sustained and the profit of which he has been deprived.

Future injury which is certain to occur and susceptible of measurement is taken into account in the assessment of the damages.

1610. The loss sustained by the holder of a trade secret includes the investment expenses incurred for the acquisition, perfection and use of the property; the profit of which he is deprived may be compensated for through payment of royalties.

1611. In contractual matters, the debtor is liable only for damages that were foreseen or foreseeable at the time the obligation was contracted, where the failure to perform the obligation does not proceed from intentional or gross fault on his part; even then, the damages only include what is an immediate and direct consequence of the nonperformance.

1612. Damages owed to the creditor for bodily injury he sustains are measured as to the future aspects of the injury according to the discount rates set from time to time by order of the Government.

1613. The court, in awarding damages for bodily injury, may, for a period of not over three years, reserve the right of the creditor to apply for additional damages, if the course of his physical condition cannot be determined with sufficient precision at the time of the judgment.

1614. Damages owed for bodily injury are exigible forthwith, unless otherwise agreed by the parties.

Where the creditor is a minor, however, the court may order payment, in whole or in part, in the form of an annuity or by periodic instalments, on the terms and conditions it fixes and indexed according to a fixed rate. Within three months of the date on which the minor becomes of full age, the creditor may demand immediate and discounted payment of any amount still receivable.

1615. Damages which result from delay in the performance of an obligation to pay a sum of money consist of interest at the agreed rate or, in the absence of any agreement, at the legal rate.

The creditor is entitled to the damages from the date of default without having to prove that he has sustained any injury.

Notwithstanding the foregoing, a creditor may stipulate that he will be entitled to additional damages, provided he justifies them.

1616. Damages other than those resulting from delay in the performance of an obligation to pay a sum of money bear interest at the rate agreed by the parties, or, in the absence of agreement, at the legal rate, from the date of default or from any other later date which the court considers appropriate, having regard to the nature of the injury and the circumstances.

1617. An indemnity may be added to the amount of damages awarded for any reason, which shall be fixed by applying to the amount of the damages, from either of the dates used in computing the interest on them, a percentage equal to the excess of the rate of interest fixed for claims of the state under section 28 of the Act respecting the Ministère du Revenu over the rate of interest agreed by the parties or, in the absence of agreement, over the legal rate.

1618. Interest accrued on principal does not itself bear interest except where that is provided by agreement or by law or where additional interest is expressly demanded in a suit.

1619. Where the awarding of punitive damages is provided for by law, the amount of such damages must not exceed what is reasonably sufficient to fulfil their preventive purpose.

Punitive damages are measured in regard to all the appropriate circumstances, in particular the patrimonial situation of the debtor, the extent of the reparation for which he is already liable to the creditor and, where such is the case, the fact that the payment of the damages is wholly or partly assumed by a third person.

2. Anticipated assessment of damages

1620. A penal clause is one by which the parties assess the anticipated damages by stipulating that the debtor will suffer a penalty if he fails to perform his principal obligation.

A creditor has the right to avail himself of a penal clause instead of enforcing, in cases which admit of it, the specific performance of the obligation; but he cannot exact both performance and penalty, unless the penalty has been stipulated for mere delay in the performance of the obligation.

1621. A creditor who avails himself of a penal clause is entitled to the amount of the stipulated penalty without having to prove the injury he has suffered.

However, the amount of the stipulated penalty may be reduced if the creditor has benefited from partial performance of the obligation or if the clause is abusive.

1622. Where an obligation with a penal clause is indivisible without being solidary and its nonperformance is due to the fault of only one of the co-debtors, the penalty may be exacted in full against him or against each of the co-debtors for his share, but, in the latter case, without prejudice to their remedy against the co-debtor who caused the penalty to be incurred.

1623. Where an obligation with a penal clause is divisible, the penalty also is divisible and is incurred only by that debtor who fails to perform the obligation, and only for that part for which he is liable, without there being any action against those who have performed it.

This rule does not apply where the obligation is solidary, nor where the penal clause was stipulated to prevent partial payment and one of the co-debtors has prevented the performance of the obligation for the whole; in this case, that co-debtor is liable for the whole penalty and the others are liable for their respective shares only, without prejudice to their remedy against him.

1624. In a consumer contract, any penal clause stipulated against a consumer who obtains a movable property or services is deemed not written.

SECTION III

PROTECTION OF RIGHT TO PERFORMANCE OF OBLIGATIONS

§ 1.—*Conservatory measures*

1625. A creditor may take all necessary or useful measures to preserve his rights.

§ 2.—*Oblique action*

1626. A creditor whose claim is certain, liquid and exigible may exercise the rights and actions belonging to the debtor, in the debtor's name, where the debtor refuses or neglects to exercise them to the injury of the creditor.

However, he cannot exercise rights and actions which are strictly personal to the debtor.

1627. The person against whom an oblique action is brought may set up against the creditor all the defenses he could have set up against his own creditor.

1628. Property recovered by a creditor in the name of the debtor falls into the patrimony of the debtor and benefits all his creditors.

§ 3.—*Paulian action*

1629. A creditor who suffers injury through a juridical act by which his debtor, with fraudulent intent, renders himself or seeks to render himself insolvent, or by which, being insolvent, he grants preference to another creditor may have it declared that the act cannot be set up against him.

1630. An onerous contract or a payment made for the performance of such a contract is deemed to be made with fraudulent intent if the contracting party or the creditor knew the debtor to be insolvent or knew that the debtor, by the juridical act, was rendering himself or was seeking to render himself insolvent.

1631. A gratuitous contract or a payment made for the performance of such a contract is deemed to be made with fraudulent intent, even if the contracting party or the creditor was unaware of the facts, where the debtor is or becomes insolvent at the time the contract is formed or the payment is made.

1632. The creditor's claim must be certain, liquid and exigible at the time of the action; it must also exist prior to the juridical act which is attacked, unless such act was made for the purpose of defrauding a later ranking creditor.

1633. On pain of forfeiture, the action must be brought within one year from the day on which the creditor learned of the injury resulting from the act which is attacked, or, where the action is brought by a trustee in bankruptcy on behalf of all the creditors, from the date of appointment of the trustee.

In any case, the action must be brought within three years of the juridical act itself.

1634. Where it is declared that a contract or payment cannot be set up against the creditor, it cannot be set up against any prior creditors who took measures to protect their rights; all may have the property forming the object of the contract or payment seized and sold

and be paid according to their claims, subject to the rights of preferred or hypothecary creditors.

CHAPTER VII

TRANSFER AND ALTERATION OF OBLIGATIONS

SECTION I

ASSIGNMENT OF CLAIMS

§ 1.—*Assignment of claims in general*

1635. A creditor may assign to a third person all or part of a claim or a right of action which he has against his debtor.

The assignment must not be injurious to the rights of the debtor nor render his obligation more onerous.

1636. The assignment of a claim includes its accessories.

1637. Where the assignment is by onerous title, the assignor guarantees that the claim exists and is owed to him, even if the assignment is made without warranty, unless the assignee has acquired it at his own risk or knew of the uncertain nature of the claim at the time of the assignment.

1638. Where the assignor by onerous title guarantees the solvency of the debtor by a simple clause of warranty, he is liable for the solvency only at the time of the assignment and to the extent of the price he received.

1639. An assignment may be set up against the debtor as soon as he has acquiesced in it or received a copy or a pertinent abstract of the deed of assignment or any other evidence of the assignment which may be set up against the assignor.

Where the debtor cannot be found in Québec, the assignment may be set up against him upon publication of a notice of assignment in a newspaper distributed in the locality of his last known address or, if the debtor carries on an enterprise, in the locality where his principal establishment is situated.

1640. The assignment of a universality of claims, present or future, may be set up against debtors and third persons by the registration of the assignment in the register of movable real rights, provided, however, that the other formalities whereby the

assignment may be set up against the debtors who have not acquiesced in it have been accomplished.

1641. A debtor may set up against the assignee any payment made to the assignor before the assignment could be set up against him, as well as any other cause of extinguishment of the obligation that occurred before that time.

A debtor may also set up any payment made in good faith by himself or his surety to an apparent creditor, even if the required formalities whereby the assignment may be set up against the debtor and third persons have been accomplished.

1642. Where a copy or an abstract of the deed of assignment or any other evidence of the assignment which may be set up against an assignor is handed over to the debtor at the time of service of an action brought against the debtor, no legal costs may be exacted from the debtor if he pays within the time fixed for appearance, unless he has already been put in default.

1643. The assignees of the same claim, and the assignor in respect of any remainder due to him, are paid in proportion to the value of their rights.

However, persons having obtained an assignment with a guarantee of payment are paid in preference to all other assignees and to the assignor, and, among themselves, in the order of the dates on which their respective assignments could be set up against the debtor.

§ 2.—*Assignment of claims attested by bearer instrument*

1644. It is of the essence of a claim attested by a bearer instrument issued by a debtor that it may be assigned by mere delivery, to another bearer, of the instrument attesting it.

1645. A debtor who has issued a bearer instrument is bound to pay the debt attested thereby to any bearer who hands over the instrument to him, except where he has received notice of a judgment ordering him to withhold payment thereof.

He cannot set up any defenses against the bearer other than defenses respecting nullity or defect of title, those founded on an express stipulation in the instrument or such defenses as he may raise against the bearer personally.

1646. A debtor who has issued a bearer instrument remains bound towards every bearer in good faith, even if the debtor shows that the instrument was negotiated against his will.

1647. A person who has been unlawfully dispossessed of a bearer instrument cannot prevent the debtor from paying the claim to the person who presents the instrument except on notification of an order of the court.

SECTION II

SUBROGATION

1648. A person who pays in the place of a debtor may be subrogated to the rights of the creditor.

He does not have more rights than the subrogating creditor.

1649. Subrogation may be conventional or legal.

1650. Conventional subrogation may be made by the creditor or the debtor, but it must be express and attested in writing.

1651. Subrogation made by the creditor must be made at the same time as he receives payment. It takes effect without the consent of the debtor, notwithstanding any stipulation to the contrary.

1652. Subrogation cannot be made by a debtor in favour of anyone except his lender and it takes effect without the consent of the creditor.

In order for subrogation to be valid in this case, the loan instrument and the acquittance must each be made in the form of a notarial deed *en minute* or by a private writing drawn up before two witnesses who shall sign it. In addition, the loan instrument must state that the loan is granted for the purpose of paying the debt, and the discharge must state that the debt is paid out of the loan.

1653. Subrogation takes place by operation of law

(1) in favour of a creditor who pays another creditor whose claim is preferred to his because of a priority or a hypothec;

(2) in favour of the acquirer of a property who pays a creditor whose claim is secured by a hypothec on the property;

(3) in favour of a person who pays a debt for which he is bound with others or for others and which he has an interest in paying;

(4) in favour of an heir who pays with his own funds a debt of the succession for which he was not bound;

(5) in any other case provided by law.

1654. Subrogation has effect against the principal debtor and his warrantors, who may set up against the person subrogated the defenses they had against the original creditor.

1655. A creditor who has been only partly paid may exercise his rights in respect of the balance of his claim in preference to the person subrogated from whom he has received only part of his claim.

However, if the creditor has obligated himself to the person subrogated to guarantee payment of the amount for which the subrogation is acquired, the person subrogated has the priority.

1656. Persons who are legally subrogated to the rights of the same creditor are paid in proportion to the value of their claims.

SECTION III

NOVATION

1657. Novation is effected where the debtor contracts towards his creditor a new debt which is substituted for the existing debt, which is extinguished, or where a new debtor is substituted for the former debtor, who is discharged by the creditor; in such a case, novation may be effected without the consent of the former debtor.

Novation is also effected where, by the effect of a new contract, a new creditor is substituted for the former creditor, towards whom the debtor is discharged.

1658. Novation is not presumed; the intention to effect it must be evident.

1659. Priorities and hypothecs attached to the existing claim are not transferred to the claim substituted for it, unless they are expressly reserved by the creditor.

1660. Where novation is effected by substitution of a new debtor, the new debtor may set up against the creditor the defenses which the former debtor had against the creditor, but not defenses that he himself could have raised against the former debtor, unless he can invoke the nullity of the act whereby he was bound to him.

Furthermore, priorities and hypothecs attached to the existing claim cannot be transferred to the property of the new debtor; nor can they be reserved upon the property of the former debtor without his consent.

1661. Where novation is effected between the creditor and one of the solidary debtors, priorities and hypothecs attached to the existing claim can only be reserved upon the property of the co-debtor who contracts the new debt.

1662. Novation effected between the creditor and one of the solidary debtors releases the other co-debtors in respect of the creditor; novation effected in respect of the principal debtor releases his sureties.

However, where the creditor has required the accession of the co-debtors, in the first case, or of the sureties, in the second case, the existing claim subsists if the co-debtors or the sureties refuse to accede to the new contract.

1663. Novation which has been agreed to by one of the solidary creditors cannot be set up against the other co-creditors, except for his part in the solidary claim.

SECTION IV

DELEGATION

1664. Designation by a debtor of a person who is to pay in his place constitutes a delegation of payment only when the delegate obligates himself personally to the delegatee to make the payment; otherwise, it merely constitutes an indication of payment.

1665. Where the delegatee accepts the delegation, he preserves his rights against the delegator, unless the delegatee evidently intends to discharge him.

The delegatee cannot exact payment from the delegator, however, before first addressing the delegate.

1666. The delegate cannot set up against the delegatee the defenses he could have raised against the delegator, even though he did not know of their existence at the time of the delegation.

This rule does not apply if, at the time of the delegation, nothing is due to the delegatee, nor does it injure the remedy of the delegate against the delegator.

1667. The delegate may set up against the delegatee such defenses as the delegator could have set up against the delegatee.

Notwithstanding the foregoing, the delegate cannot set up compensation for what the delegator owes to the delegatee or for what the delegatee owes to the delegator.

CHAPTER VIII

EXTINGUISHMENT OF OBLIGATIONS

SECTION I

GENERAL PROVISIONS

1668. Obligations are extinguished not only by the causes of extinguishment contemplated in other provisions of this Code, such as payment, the expiry of an extinctive term, novation or prescription, but also by compensation, confusion, release and impossibility of performance.

SECTION II

COMPENSATION

1669. Where two persons are reciprocally debtor and creditor of each other, the debts for which they are liable are extinguished by compensation, up to the amount of the lesser debt.

Notwithstanding the foregoing, compensation cannot take place in respect of the state.

1670. Compensation is effected by operation of law upon the coexistence of debts that are certain, liquid and exigible and the object of both of which is a sum of money or a certain quantity of fungible property identical in kind.

A person may apply for judicial liquidation of a debt in order to set it up for compensation.

1671. Compensation is effected even though the debts are not payable at the same place, provided allowance is made for the expenses of remittance, if any.

1672. A delay of grace granted for payment of one of the debts does not prevent compensation.

1673. Compensation is effected regardless of the cause of the obligation that has given rise to the debt.

Compensation does not take place, however, if the claim results from an act performed with intention to harm or if the object of the debt is property which is exempt from seizure.

1674. Where several debts subject to compensation are owed by one debtor, the rules of imputation of payment apply.

1675. One of the solidary debtors cannot set up compensation for what the creditor owes to his co-debtor, except for the share of that co-debtor in the solidary debt.

A debtor, whether solidary or not, cannot set up compensation against one of the solidary creditors for what a co-creditor owes him, except for the share of that co-creditor in the solidary debt.

1676. A surety may set up compensation for what the creditor owes to the principal debtor, but the principal debtor cannot set up compensation for what the creditor owes to the surety.

1677. A debtor who has acquiesced purely and simply in the assignment or hypothecating of claims by his creditor to a third person cannot afterwards set up against the third person any compensation that he could have set up against the original creditor before he acquiesced.

An assignment or hypothec in which a debtor has not acquiesced, but which from a certain time may be set up against him, prevents compensation only for debts of the original creditor which come after the time when the assignment or hypothec may be set up against him.

1678. Compensation can neither take place nor be renounced to the injury of the acquired rights of a third person.

1679. A debtor who could have set up compensation and has nevertheless paid his debt cannot afterwards avail himself, to the injury of third persons, of any priority or hypothec attached to the debt.

SECTION III

CONFUSION

1680. Where the qualities of creditor and debtor are united in the same person, confusion is effected, extinguishing the obligation.

Nevertheless, in certain cases where confusion ceases to exist, the effects cease also.

1681. Confusion of the qualities of creditor and debtor in the same person avails the sureties. Confusion of the qualities of surety and creditor or of surety and principal debtor does not extinguish the primary obligation.

1682. Confusion of the qualities of creditor and solidary co-debtor or of debtor and solidary co-creditor extinguishes the obligation only to the extent of the share of that co-debtor or co-creditor.

1683. A hypothec is extinguished by confusion of the qualities of hypothecary creditor and owner of the hypothecated property.

However, if the creditor is evicted for a cause which is not attributable to him, the hypothec revives.

SECTION IV

RELEASE

1684. Release takes place where the creditor releases his debtor from his obligation.

Release is full, unless it is stipulated to be partial.

1685. Release is either express or tacit.

Release is either onerous or gratuitous, according to the nature of the act from which it lies.

1686. A creditor who voluntarily surrenders the original title of an obligation to his debtor is presumed to grant him a release of the debt, unless the circumstances indicate that the debtor has paid the debt.

Similarly, a creditor who voluntarily surrenders the original title of an obligation to one of the solidary debtors is presumed to grant a release of the debt in favour of all the debtors.

1687. Express release granted to one of the solidary debtors releases the other co-debtors only for the share of the person discharged; if one or several of the other co-debtors become insolvent, the shares of the insolvents are apportioned rateably between all the

other co-debtors, except the co-debtor to whom the release was granted, whose share is borne by the creditor.

Express release granted by one of the solidary creditors releases the debtor only to the extent of the share of that creditor.

1688. Express renunciation of a priority or a hypothec by a creditor does not give rise to a presumption of release of the secured debt.

1689. Express release granted to one of the sureties releases the other sureties to the extent of the remedy they would have had against the released surety.

Nevertheless, no payment received by the creditor from the surety for his release may be imputed to the discharge of the principal debtor or of the other sureties, except, as regards the sureties, where they have a remedy against the released surety and to the extent of that remedy.

SECTION V

IMPOSSIBILITY OF PERFORMANCE

1690. A debtor is released where he cannot perform an obligation by reason of a superior force and before he is in default, or where, although he was in default, the creditor could not, in any case, benefit by the performance of the obligation by reason of that superior force, unless, in either case, the debtor has expressly assumed the risk of superior force.

The burden of proof of superior force is on the debtor.

1691. A debtor released by impossibility of performance cannot exact performance of the correlative obligation of the creditor; if the performance has already been rendered, restitution shall be made.

Where the debtor has performed part of his obligation, the creditor remains bound to perform his own obligation to the extent of his enrichment.

CHAPTER IX

RESTITUTION OF PRESTATIONS

SECTION I

CIRCUMSTANCES IN WHICH RESTITUTION TAKES PLACE

1692. Restitution of prestations takes place where a person is required by law to return to another person the property he has received, either unlawfully or by error, or under a juridical act which is subsequently annulled retroactively or under which the obligations become impossible to perform by reason of superior force.

The court may, exceptionally, refuse restitution where it would have the effect of according an undue advantage to one party, whether the debtor or the creditor, unless it deems it sufficient, in that case, to modify the scope or mode of the restitution instead.

SECTION II

MODE OF RESTITUTION

1693. Restitution of prestations is made in kind, but, if this is impossible or cannot be done without serious inconvenience, it may be made by equivalence.

Equivalence is estimated at the time when the debtor received what he must restore.

1694. In the case of loss or alienation of property subject to restitution, the person responsible for the restitution is bound to return the value of the property, considered when it was received, or at the time of its loss or alienation, or upon its restitution, whichever amount is the smallest, or, if the person is in bad faith or if the restitution is due to his act or fault, whichever amount is the greatest.

Notwithstanding the foregoing, if the property has perished by superior force, the debtor is exempt from making restitution, but he must assign to the creditor, as the case may be, the indemnity he has received for the loss of the property or, if he has not already received it, the right to the indemnity.

1695. The person who is bound to make restitution shall indemnify the creditor for the deterioration and any other depreciation in value of the property being restored other than that arising from normal use.

1696. The right to reimbursement for expenses incurred in respect of property subject to restitution is governed by the provisions of Book Four, Property, applicable to a possessor in good faith or, in case of bad faith or if the restitution is due to the fault of the person who is bound to make restitution, by those applicable to possessors in bad faith.

1697. The fruits and revenues of the property being restored belong to the person who is bound to make restitution, and he bears the costs he has incurred to produce them. He owes no indemnity for enjoyment of the property unless that was the primary object of the prestation or unless the property was subject to rapid depreciation.

If the person who is bound to make restitution is in bad faith or if the restitution is due to his fault, he is bound, after compensating for the costs, to return the fruits and revenues and indemnify the creditor for any enjoyment he has derived from the property.

1698. Costs of restitution are borne by the parties, in proportion, where applicable, to the value of the prestations mutually restored.

Where one party is in bad faith or where the restitution is due to his fault, the costs are borne by that party alone.

1699. Protected persons are bound to make restitution of prestations to the extent of the enrichment they derive from them; proof of such enrichment is borne by the person claiming restitution.

A protected person may, however, be bound to make full restitution where restitution has become impossible through his act and that act is equivalent to a gross fault.

SECTION III

EFFECTS OF RESTITUTION ON THIRD PERSONS

1700. Acts of alienation by onerous title performed by a person who is bound to make restitution, if made in favour of a third person in good faith, may be set up against the person to whom restitution is owed. Acts of alienation by gratuitous title cannot be set up, subject to the rules on prescription.

Any other acts performed in favour of a third person in good faith may be set up against the person to whom restitution is owed.

TITLE TWO

NOMINATE CONTRACTS

CHAPTER I

SALE

SECTION I

SALE IN GENERAL

§ 1.—*General provisions*

1701. Sale is a contract by which a person, the seller, transfers property to another person, the buyer, for a price in money which the latter obligates himself to pay.

1702. A person charged with the sale or administration of property of another or a patrimony by appropriation or with the supervision of its administration cannot acquire such property, not even through an intermediary; nor can he sell his own property for a price paid out of the property or patrimony which he administers or the administration of which he supervises.

A person who buys or sells property contrary to the rules contained in the first paragraph is not entitled to apply for annulment of the sale; only the owner of the property or any other person having a sufficient interest in it is so entitled.

§ 2.—*Promise*

1703. The promise of sale with delivery and actual possession is equivalent to sale.

1704. Any amount paid on the occasion of a promise of sale is presumed to be a deposit on the price unless otherwise stipulated in the contract.

1705. The promisor's failure to execute the deed entitles the beneficiary of the promise to obtain a judgment in lieu thereof.

§ 3.—*Sale of property of another*

1706. The sale of property by a person other than the owner or than a person charged with its sale or authorized to sell it may be declared null.

The sale is valid, however, if the seller becomes the owner of the property.

1707. The true owner may apply for the annulment of the sale and revendicate the sold property from the buyer unless the sale was made under judicial authority or unless the buyer can set up positive prescription.

If the property is a movable property acquired in the ordinary course of business of an enterprise, the owner is bound to reimburse the buyer for the price he has paid.

1708. The buyer as well may apply for the annulment of the sale.

He cannot do so, however, where the owner himself is disentitled to revendicate the property.

§ 4.—*Obligations of the seller*

1709. The seller is bound to deliver the property and to warrant the ownership and quality of the property.

These warranties exist of right whether or not they are stipulated in the contract of sale.

I — Delivery

1710. The obligation to deliver the property is fulfilled when the seller puts the buyer in possession of the property or consents to his taking possession of it and all hindrances are removed.

1711. The seller is bound to deliver the property in the state it is in at the time of the sale, with all its accessories.

1712. The seller is bound to surrender to the buyer the titles of ownership in his possession and, in the case of the sale of an immovable, a copy of his deed of acquisition and any previous titles in his possession.

1713. The seller is bound to deliver the area, contents or quantity specified in the contract, whether the sale was made for a price based on measurements or for a total price, unless it is obvious that the certain and determinate property was sold without regard to such area, contents or quantity.

1714. A seller having granted a term for payment is not bound to deliver the property if the buyer has become insolvent since the sale.

1715. Delivery expenses are assumed by the seller and removal expenses, by the buyer.

II — Warranty of ownership

1716. The seller is bound to warrant the buyer that the property is free of all rights except those he has declared at the time of the sale and those registered in the registry office.

The seller is bound to discharge the property of all real security, even declared or registered, unless the buyer has assumed the debt so secured.

1717. The seller is warrantor towards the buyer for any encroachments on his part unless he has declared it at the time of the sale.

The seller is also warrantor for any encroachment commenced with his knowledge by a third person before the sale.

1718. The seller of an immovable is warrantor towards the buyer for any violation of restrictions of public right affecting the property which are exceptions to the ordinary law of ownership.

The seller is not warrantor towards the buyer where he has given notice of the restrictions to the buyer at the time of the sale, where a prudent and diligent buyer could have discovered them by reason of the nature, location and use of the premises or where such restrictions have been registered in the registry office.

III — Warranty of quality

1719. The seller is bound to warrant the buyer that the property and its accessories are, at the time of the sale, free of latent defects which render it unfit for the use for which it was intended or which so diminish its usefulness that the buyer would not have bought it or paid so high a price if he had been aware of them.

The seller is not bound, however, to warrant against any latent defect known to the buyer or any apparent defect; an apparent defect is a defect that can be perceived by a prudent and diligent buyer without any need of expert assistance.

1720. If the property perishes by reason of a latent defect that existed at the time of the sale, the loss shall be borne by the seller, who is bound to restore the price; if the loss results from superior force or is due to the fault of the buyer, the buyer shall deduct from his claim the value of the property in the state it was in at the time of the loss.

1721. A professional seller is bound to warrant the buyer against malfunction of the property sold, resulting from a defect existing at the time of the sale or occurring prematurely in comparison with identical items of property or items of the same type; he is not so bound where the defect is due to improper use of the property by the buyer.

1722. Sale under judicial authority does not give rise to any obligation of warranty of the quality of the sold property.

IV — Conventional warranty

1723. The parties may, in their contract, add to the obligations of legal warranty, diminish its effects or exclude it altogether but in no case may the seller exempt himself from his personal fault.

1724. A seller shall not exclude or limit his liability unless he has disclosed the defects in the title or property of which he was aware or could not have been unaware.

No exception may be made to this rule except where a buyer buys property at his own risk.

§ 5.—*Obligations of buyer*

1725. The buyer is bound to pay the price of the property sold, at the time and place of delivery. He is also bound to pay any expenses related to the deed of sale.

1726. The buyer is bound to pay interest on the sale price from the time of delivery of the property or the expiry of the period agreed by the parties.

§ 6.—*Special rules regarding exercise of rights of parties*

I — Rights of buyer

1727. The buyer of movable property may, if the seller fails to deliver it, consider the sale dissolved if the seller is in default by

operation of law or if he fails to perform his obligation within the time allowed in the writing putting him in default.

1728. Where the seller is bound to deliver the area, contents or quantity specified in the contract and is unable to do so, the buyer may obtain a reduction of the price or, if the difference causes him serious injury, resolution of the sale.

Where the area, contents or quantity exceeds that specified in the contract, the buyer is bound to pay for the excess or to restore it to the seller.

1729. A buyer who discovers a risk of eviction must, within a reasonable time after discovering it, give notice to the seller, in writing, of the right or claim of the third person, specifying its nature.

The seller cannot invoke the failure of the buyer to give the notice if he was aware of the right or claim.

1730. A buyer who ascertains that the property is defective must give notice in writing of the defect to the seller within a reasonable time after discovering it. The time begins to run, where the defect appears gradually, on the day that the buyer could have suspected the seriousness and extent of the defect; in any case, the notice must be given within three years of delivery of the property.

The seller cannot invoke the failure of the buyer to give the notice if he was aware of the defect or could not have been unaware of it.

II — Rights of seller

1731. The seller of movable property may, if the buyer fails to pay the sale price and to accept delivery of it within a reasonable time, consider the sale dissolved if the buyer is in default by operation of law or if he fails to perform his obligations within the time allowed in the writing putting him in default.

The seller may also, where it appears that the buyer will not perform a substantial part of his obligations, stop delivery of the property in transit.

1732. Except in the case of a sale with a term, the seller of movable property may, within thirty days of delivery, consider the sale dissolved and revendicate the property if the buyer, being in default, has failed to pay the price and if the property is still entire and in the same condition and has not passed into the hands of a third person who has paid the price thereof.

Where the buyer is in default and the property meets the conditions prescribed for resolution of the sale, the seizure of the property by a third person is no hindrance to the rights of the seller.

1733. The seller of immovable property cannot apply for resolution of the sale for non-payment of the price unless the contract specially stipulates that right.

If the seller meets the conditions for applying for resolution, he is bound to exercise his right within five years after the sale.

1734. A seller of immovable property wishing to avail himself of a resolutory clause shall serve notice on the buyer or any subsequent acquirer to remedy his default within sixty days after the notice is entered in the land register; the rules pertaining to taking in payment set out in the Book on Preference and Hypothec and the measures to be taken prior to the exercise of that right apply, adapted as required, to the resolution of the sale.

A seller who takes back property by exercising a resolutory clause takes it back free of any charges which the buyer may have placed on it after the seller registered his rights.

§ 7.—*Various modes of sale*

I — Trial sales

1735. The sale of property on trial is presumed to be made under a suspensive condition.

Where the trial period is not stipulated, the condition is fulfilled upon the buyer's failure to inform the seller of his refusal within thirty days after receiving the property.

II — Instalment sales

1736. The sale of property is an instalment sale where the seller reserves ownership of the property until full payment of the sale price.

Unless otherwise stipulated, an instalment sale transfers to the buyer the risk of loss of the property.

Reservation of ownership of the property cannot be set up against third persons unless it is published and, in the case of sale of movable property, unless the sale is published as well.

1737. The balance owing by the buyer becomes exigible where the property is sold under judicial authority or where the buyer assigns his right in the property to a third person without the consent of the seller.

1738. Where the buyer fails to pay the sale price in accordance with the terms and conditions of the contract, the seller may exact immediate payment of the instalments due or take back the sold property; where the contract also contains a clause of forfeiture of benefit of the term, the seller may exact payment of the balance of the sale price.

1739. Where the seller elects to take back the sold property, he must put the buyer in default or, if the reservation of ownership has been published, any subsequent acquirer.

The rules pertaining to taking in payment set forth in the Book on Preference and Hypothec and the measures to be taken prior to the exercise of that right apply, adapted as required, to the taking back of the property.

III — Sales with right of redemption

1740. A sale with a right of redemption is a sale under a resolutory condition by which the seller transfers property to the buyer while reserving the right to redeem it.

A right of redemption cannot be set up against third persons unless it is published and, in the case of sale of movable property, unless the sale is published as well.

1741. A seller wishing to exercise his right of redemption and take back property must give notice of his intention to the buyer or, if the right of redemption has been published, to any subsequent acquirer against whom he intends to pursue his remedy. The notice must be published and must be of twenty days in the case of movable property and sixty days in the case of an immovable.

1742. Where the seller exercises his right of redemption, he takes back the property free of any charges which the buyer may have placed on it, provided his right was published in accordance with the rules respecting the publication of rights.

1743. The right of redemption cannot be stipulated for a term exceeding five years. If the term exceeds five years, it is reduced to five years. The stipulated term is to be strictly observed.

1744. If the buyer of an undivided part of a property subject to a right of redemption acquires the whole property through the effect of a partition, he may obligate the seller, if the seller wishes to exercise his right, to take back the whole property.

1745. Where a sale is made by several persons jointly by way of a single contract or where the seller has left several heirs, the buyer may object to the taking back of part of the property and require the joint seller or co-heir to take back the whole property.

In other respects, the rules pertaining to joint or divisible obligations, adapted as required, apply to the exercise of the right of redemption existing for the benefit of several sellers, against several buyers, or between their heirs.

1746. A sale with a right of redemption made for the object of securing a loan is null.

IV — Auction sales

1747. An auction sale is a sale by which property is offered for sale to several persons through the intermediary of a third person, the auctioneer, and declared sold to the last and highest bidder.

1748. An auction sale is either voluntary or forced; forced sales are subject to the rules contained in the Code of Civil Procedure and to the rules contained under this subheading, so far as they are consistent.

1749. The seller may fix a reserve price or any other conditions of sale. The conditions of sale cannot be set up against the successful bidder unless the auctioneer communicates them to the persons present before receiving bids.

1750. The seller may refuse to disclose his identity at the auction but, if his identity is not disclosed to the successful bidder, the auctioneer becomes personally bound by all the obligations of the seller.

1751. At no time may a bidder withdraw his bid.

1752. An auction sale is completed when the auctioneer declares the property sold to the last bidder. Entry of the name and bid of the successful bidder in the auctioneer's register makes proof of the sale; failing such entry, proof by testimony is admissible.

1753. The seller of an immovable and the successful bidder must sign the deed of sale within ten days after either party so requests.

1754. Where an enterprise is sold at auction, the auctioneer, before remitting the sale price to the seller, must observe the formalities imposed for the sale of an enterprise.

1755. If the buyer fails to pay the price in compliance with the conditions of the sale, the auctioneer may, in addition to the ordinary remedies of a seller, resell the property for false bidding, according to usage and after sufficient notice.

A false bidder shall not bid again at a resale on default. He is bound to pay the difference between the price at which the property was sold to him and the resale price, if lesser, but is not entitled to claim any excess amount. He is also, in the case of a forced sale, liable towards the seller, the person from whom the property was seized and the creditors having obtained the judgment, for all interest, costs and damages arising from his default.

1756. A successful bidder evicted from property acquired at an auction sale may, in addition to his remedies against the seizing party, recover the price paid, with interest and costs of title, from the seller; he may also recover the price, with interest, from the creditors to whom it has been remitted, but they may set up the benefit of discussion against him.

He may claim damages resulting from any irregularity in the seizure or sale from the seizing creditor.

§ 8.—*Sale of enterprise*

1757. The sale of an enterprise is a sale which has as its object the whole or a substantial part of an enterprise and which is made outside the ordinary course of business of the seller.

1758. Before paying the price, the buyer is bound to obtain a sworn statement from the seller containing the names and addresses of all the creditors of the seller, indicating the amount and nature of each of their claims, specifying the amounts remaining to become due, and indicating the security attached to each claim.

1759. Before paying the price, the buyer must give notice of the sale to each of the preferred and hypothecary creditors designated in the statement, with a request to indicate to him in writing, within fifteen days after the request, the value the creditor attaches to his

security, taking into account the rank of his security, the amount for which it is granted, the value of the charged property and the amount of his claim.

1760. Where the price is payable in cash and is sufficient to reimburse all the creditors of the seller designated in the statement, the buyer is not bound to give notice of the sale to the preferred and hypothecary creditors of the seller or to observe the other formalities prescribed for the distribution of the sale price.

1761. A preferred or hypothecary creditor cannot exercise his claim at the time of distribution of the sale price if he has failed to indicate the value of his security; nor can he do so where such value exceeds the amount of his claim.

1762. Where the value of the security of a preferred or hypothecary creditor is smaller than the amount of his claim, it shall be counted in the distribution of the sale price, but only for the excess amount.

1763. In the deed of sale, the buyer and the seller shall designate a person to whom the buyer must remit, for distribution to the creditors, the sale price, whether it is payable in whole or in part, in cash or at term.

1764. The person designated to distribute the sale price is bound to prepare a distribution statement and give a copy of it to the creditors named in the seller's statement. If it is not contested within fifteen days of sending, the designated person shall pay the creditors proportionately to their claims.

If the distribution statement is contested, the designated person shall withhold from the price whatever amount is necessary to discharge the contested part of the claim until judgment is rendered on the contestation, unless the contesting party is a creditor whose name the seller failed to declare and the seller approves the claim, in which case the creditor shall participate in the distribution.

1765. Where the buyer has observed the prescribed formalities, the creditors of the seller have no right or remedy against the buyer or against the sold property but they retain their remedies against the seller.

If the creditors of the seller are preferred or hypothecary creditors and have not participated or have participated only partially

in the distribution, they retain the right to exercise their rights and remedies against the sold property securing the payment of their claims.

1766. Where the prescribed formalities have not been observed, the sale of an enterprise cannot be set up against creditors of the seller who have claims prior to the date of conclusion of the sale, unless the buyer pays them, up to the value of the property he has bought.

The fact that the sale cannot be set up must be invoked, on pain of forfeiture, within one year from the day on which the creditor becomes aware of the sale and, in any case, within three years from the act of sale itself.

1767. The buyer and the seller are liable for the failure of the designated person to distribute the sale price in accordance with the prescribed formalities but the liability of the buyer is limited to the value of the property he has bought.

1768. A sale made by a preferred or hypothecary creditor in the exercise of his rights and remedies, by a person charged with the administration of the property of others for the benefit of the creditors or by a public officer acting under judicial authority is not subject to the rules governing the sale of an enterprise.

Nor do those rules apply to a sale made to a partnership established by the seller with a view to purchasing the assets of the enterprise where the partnership assumes the debts of the seller, continues the enterprise and gives notice of the sale to the creditors of the seller.

§ 9.—*Sale of certain incorporeal property*

I — Sale of rights of succession

1769. A person who sells rights of succession without specifying in detail the property affected warrants only his quality as an heir.

1770. The seller is bound to hand over the fruits and revenues he has received to the buyer, together with the principal of the claim due and the price of any property he has sold which formed part of the succession.

1771. The buyer is bound to reimburse the seller for the debts and liquidation expenses of the succession that he has paid and all amounts owed to him by the succession.

The buyer must also pay the debts of the succession for which the seller is liable.

II — Sale of litigious rights

1772. A right is litigious when it is uncertain, contested or contestable by the debtor, whether an action is pending or there is reason to presume that it will become necessary.

1773. No judge, advocate, notary or officer of justice may acquire litigious rights, on pain of absolute nullity of the sale.

1774. Where litigious rights are sold, the person from whom they are claimed is fully discharged by paying to the buyer the sale price, the costs related to the sale and interest on the price computed from the day on which the buyer paid it.

This right of withdrawal cannot be exercised where the sale is made to a creditor in payment of what is due to him, to a co-heir or co-owner of the rights sold or to the possessor of the property subject to the right. Nor can it be exercised where a court has rendered a judgment affirming the rights sold or where the rights have been established and the case is ready for judgment.

SECTION II

SPECIAL RULES REGARDING SALE OF RESIDENTIAL IMMOVABLES

1775. The sale of an existing or planned residential immovable by the builder or a promoter to a natural person who acquires it to occupy it must be preceded by a preliminary contract by which a person promises to buy the immovable, whether or not the sale includes the transfer to him of the seller's rights over the land.

The preliminary contract must stipulate that the promisor may withdraw his promise within ten days after signing it.

1776. The preliminary contract must contain, in addition to the name and address of the seller and of the promisor, an indication of the work to be performed, the sale price, the date of delivery and the real rights affecting the immovable, as well as any useful information pertaining to the features of the immovable and, where the sale price is revisable, the terms and conditions of revision.

Where the contract provides for an indemnity in case of exercise of the right of withdrawal, the indemnity shall not exceed one-half of one per cent of the agreed sale price.

1777. Where a fraction of an immovable under divided co-ownership or an undivided part of a residential immovable comprising at least ten dwellings is sold or where a residence forming part of a development comprising at least ten residences and having common facilities is sold, the seller must give the promisor a memorandum, at the time of signing the preliminary contract.

A memorandum must also be given where the same fraction of an immovable under co-ownership is sold to several persons who thereby acquire a right of enjoyment in the fraction, periodically and successively.

1778. The memorandum complements the preliminary contract. It shall contain the names of the architects, engineers, builders and promoters, a plan of the overall real estate development project and, where applicable, the general development plan of the project and a summary of the descriptive specifications. It shall also contain the budget forecast, indicate the common facilities and contain information on the management of the immovable and, where applicable, on the right of emphyteusis or superficies affecting the immovable. The budget forecast need not be contained in the memorandum where the sale concerns an undivided part.

A copy or summary of the declaration of co-ownership or indivision agreement and of the by-laws of the immovable must be appended to the memorandum even if they are draft documents.

1779. Where a fraction of an immovable under divided co-ownership is sold, the memorandum shall contain a statement of the leases granted by the promoter or the builder on the private or common portions of the immovable and indicate the maximum number of fractions intended for lease by the promoter or builder.

1780. Where the promoter or builder, by granting a lease, exceeds the maximum number indicated in the memorandum, the syndicate of co-owners, after notifying the lessor and the lessee, may demand the resiliation of the lease. If there are several leases in excess of the maximum number, the most recent leases must be resiliated first.

1781. The budget forecast must be prepared on the basis of one year of full occupancy of the immovable; in the case of an immovable

under divided co-ownership, it must be prepared for a period beginning on the date of registration of the declaration of co-ownership.

The budget shall include, in particular, a statement of debts and claims, revenues and expenditures and common expenses. It shall also indicate, for each fraction, the likely amount of real estate taxes, the rate of such taxes and the annual expenses payable, including, where applicable, the contribution to the contingency fund.

1782. The sale of a fraction of an immovable under co-ownership is resolved of right where the declaration of co-ownership is not registered within thirty days after the date on which it can be registered pursuant to the Book on the Publication of Rights.

The same rule applies to the sale of an undivided part of an immovable under co-ownership where the indivision agreement is not registered within thirty days after the signature of the preliminary contract.

1783. The sale of a residential immovable that is not preceded by the preliminary contract may be annulled on the application of the buyer if he shows that he suffers serious injury therefrom.

1784. The sale, by a contractor, of land belonging to him together with an existing or planned residential immovable is subject to the rules regarding contracts for work or source pertaining to warranties, adapted as required. The rules also apply to sales by a real estate promoter.

SECTION III

VARIOUS CONTRACTS SIMILAR TO SALE

§ 1.—*Exchange*

1785. Exchange is a contract by which the parties transfer property other than money to each other for other property.

1786. Where one of the parties proves, even after having received the property transferred to him in exchange, that the other party was not the owner of the property, he cannot be compelled to deliver the property he had promised in exchange, but only to return the property he has received.

1787. A party who is evicted of the property he has received in exchange may claim damages or recover the property he has transferred.

1788. In all other respects, the rules pertaining to contracts of sale apply to contracts of exchange.

§ 2.—*Giving in payment*

1789. Giving in payment is a contract by which a debtor transfers property to his creditor, who is willing to take it in place and payment of a sum of money or some other property due to him.

1790. Giving in payment is subject to the rules pertaining to contracts of sale and the person who so transfers property is bound to the same warranties as a seller.

Giving in payment is perfected only by delivery of the property.

1791. Any clause by which a creditor, with a view to securing the performance of the obligation of his debtor, reserves the right to become the irrevocable owner of the property or to dispose of it is deemed of no effect.

§ 3.—*Alienation for rent*

1792. Alienation for rent is a contract by which the lessor transfers the ownership of an immovable to a lessee in return for a ground rent which the latter obligates himself to pay.

The rent is payable in money or in kind, at the end of each year, from the date of constitution of the rent.

1793. The lessee may free himself at any time from the annual payments of rent by offering to reimburse the value of the rent in principal and renouncing the recovery of the payments made, but he cannot substitute an authorized insurer to make the payments in his place.

1794. The lessee is personally liable towards the lessor for the rent. He is not discharged from his obligation by his abandonment of the immovable or its destruction by superior force.

1795. In all other respects, the rules pertaining to contracts of sale and to annuities apply to contracts of alienation for rent.

CHAPTER II

GIFTS

SECTION I

NATURE AND SCOPE OF GIFTS

1796. Gift is a contract by which a person, the donor, transfers property by gratuitous title to another person, the donee.

Gifts may be *inter vivos* or *mortis causa*.

1797. A gift which entails actual divestment of the donor in the sense that the donor actually becomes the debtor of the donee is a gift *inter vivos*.

The fact that the transfer or delivery of the property is subject to a term or that the transfer affects a certain and determinate property which the donor undertakes to acquire or a property determinate only as to kind which the donor undertakes to deliver does not prevent the divestment of the donor from being actual divestment.

1798. A gift whereby the divestment of the donor remains conditional on his death and takes place only at that time is a gift *mortis causa*.

1799. An act by which a person renounces a right that he has not yet acquired or unconditionally renounces a succession or legacy does not constitute a gift.

1800. A remunerative gift or a gift with a charge constitutes a gift only for the value in excess of that of the remuneration or charge.

1801. Indirect gifts and disguised gifts are governed by this chapter, except as to their form.

1802. The promise of a gift does not constitute a gift but only confers on the beneficiary of the promise the right to claim damages from the promisor, on his failure to fulfil his promise, equivalent to the benefits which the beneficiary has granted and the expenses he has incurred in consideration of the promise.

SECTION II

CERTAIN CONDITIONS PERTAINING TO GIFTS

§ 1.—*Capacity to make and receive gifts*

1803. Minors and protected persons of full age, even represented by their tutors or curators, cannot make gifts except gifts of property of little value or customary presents, subject to the rules pertaining to marriage contracts.

1804. Fathers and mothers or tutors may accept gifts made to minors or, provided they are born alive and viable, to children conceived but yet unborn.

Only tutors or curators may accept gifts made to protected persons of full age. Minors and persons of full age who have tutors may, nevertheless, accept alone gifts consisting of property of little value or customary presents.

1805. A person of full age who, to accept a gift, requires the assistance of the adviser appointed to him may also make a gift with his assistance.

§ 2.—*Certain rules governing validity of gifts*

1806. The gift of property by a person who does not own it or who is not charged with giving it or authorized to give it is null, unless the donor has expressly undertaken to acquire the property.

1807. A gift made to the owner, a director or an employee of a health or social services establishment who is neither the spouse nor a close relative of the donor is null if it was made while the donor was receiving care or services from the establishment.

A gift made to a member of a foster family while the donor was residing with that family is also null.

1808. Gifts *inter vivos* are valid only as to present property.

The gift of future property is deemed to be *mortis causa*, but the gift of both present and future property is deemed to be *mortis causa* only with respect to the future property.

1809. A gift *mortis causa* is null unless it is made by marriage contract or unless it may be upheld as a legacy.

1810. A gift made during the supposed mortal illness of the donor is null as having been made *mortis causa*, whether or not death follows, unless circumstances tend to render it valid.

If the donor recovers and leaves the donee in peaceable possession for three years, the nullity is covered.

1811. A gift *inter vivos* which imposes on the donee the obligation to pay debts or charges other than those existing at the time of the gift is null, unless the nature and amount of those other debts or charges are specified in the contract.

1812. A gift *inter vivos* stipulated to be revocable at the sole discretion of the donor is null, even if it is made by marriage contract.

1813. A gift *inter vivos* made otherwise than by particular title is absolutely null.

§ 3.—*Form and publication of gifts*

1814. The gift of movable or immovable property must be made, on pain of absolute nullity, by notarial deed *en minute*, and must be published.

These rules do not apply where, in the case of the gift of movable property, the consent of the parties is accompanied by delivery and immediate possession of the property.

SECTION III

RIGHTS AND OBLIGATIONS OF PARTIES

§ 1.—*General provisions*

1815. The donor shall deliver the property by putting the donee in possession of it or allowing him to take possession of it, all hindrances being removed.

1816. The donor is bound to transfer only the rights he holds in the gift property.

1817. The donee cannot recover from the donor a payment he has made to free the property of a right belonging to a third person or to execute a charge, except so far as the payment exceeds the benefit he derives from the gift.

The evicted donee may, however, recover from the donor the expenses paid in connection with the gift in excess of the benefit he derives from it if the eviction, whether total or partial, results from a defect in the transferred right which the donor was aware of but failed to disclose at the time of the gift.

1818. The donor is not liable for latent defects in the gift property.

He is liable, however, to reparation for injury caused to the donee as a result of a safety defect, if he was aware of the defect but failed to disclose it at the time of the gift.

1819. The donor shall pay the expenses related to the contract and the donee, those related to the removal of the property.

§ 2.—*Debts of the donor*

1820. Unless otherwise provided in the contract or by law, the donee is solely liable for debts of the donor connected with a universality of assets and liabilities he receives.

§ 3.—*Charges stipulated in favour of third person*

1821. A gift may be made with a charge or a stipulation in favour of a third person.

1822. A charge stipulated in favour of several persons with no determination of their respective shares entails, upon the death of one of them, the accretion of his share in favour of the surviving co-beneficiaries.

Where the respective shares of the beneficiaries are determined, the death of one of them does not entail accretion.

1823. The donee is personally liable for charges on the gift property.

1824. A charge which, owing to circumstances unforeseeable at the time of the acceptance of the gift, becomes impossible or too burdensome for the donee may be changed or revoked by the court, taking account of the value of the gift, the intention of the donor and the circumstances.

1825. The revocation or lapse of a charge stipulated in favour of a third person benefits the donee, unless another beneficiary is designated.

SECTION IV

REVOCATION OF GIFTS ON ACCOUNT OF INGRATITUDE

1826. Gifts *inter vivos* may be revoked on account of ingratitude.

Ingratitude is a ground of revocation where the donee has behaved in a seriously reprehensible manner towards the donor, having regard to the nature of the gift, the faculties of the parties and the circumstances.

1827. The action for revocation must be brought during the lifetime of the donee and within one year after ingratitude became a ground or the day the donor became aware of it.

The death of the donor within the time for bringing an action does not extinguish the right to bring action, but the heirs of the donor must act within one year after his death.

1828. The revocation of a gift obligates the donee to restore to the donor what he has received under the contract, in accordance with the rules of this book pertaining to the restitution of prestations.

The revocation entails extinguishment, for the future, of charges stipulated in the contract.

SECTION V

GIFTS MADE BY MARRIAGE CONTRACT

1829. Gifts made by marriage contract may be *inter vivos* or *mortis causa*.

They are valid only if the contract takes effect.

1830. Any person may make a gift *inter vivos* by marriage contract but only the future spouses, the spouses, their respective children and their common children born or yet unborn, if they are born alive and viable, may be donees.

The only persons between whom gifts *mortis causa* may be made are those entitled to be beneficiaries of gifts *inter vivos* made by marriage contract.

1831. Gifts *mortis causa*, whether universal or by general title, are revocable at any time and gifts *mortis causa* by particular title are presumed revocable.

Notwithstanding the foregoing, if a donor has stipulated that a gift is irrevocable, he cannot dispose of the property gratuitously by an act *inter vivos* or by will without the consent of the donee and of all other interested persons, unless the gift is of property of little value or customary presents. The donor continues nonetheless to hold the rights in the gift property and he remains free to alienate it by onerous title.

CHAPTER III

LEASING

1832. Leasing is a contract by which a person, the lessor, puts movable property at the disposal of another person, the lessee, for a fixed term and in return for payment.

The lessor shall acquire the property that is the subject of the leasing from a third person, on the application and in accordance with the instructions of the lessee.

1833. The lessor shall disclose the contract of leasing in the deed of purchase.

1834. The seller of the property is directly bound towards the lessee by the legal and conventional warranties inherent in the contract of sale.

1835. The lessee assumes all risks of loss of the property, even by superior force, from the time he takes possession of the property.

He likewise assumes all maintenance and repair expenses.

1836. The rights resulting from the leasing must be published.

1837. If the property is not delivered to the lessee within a reasonable time after the formation of the contract, the lessee may, once the lessor is in default, consider the contract of leasing resolved.

1838. Where the contract of leasing is resolved and the lessee has derived a benefit from the contract, the lessor, when returning the prestations he has received from the lessee, may deduct a reasonable amount to take account of such enrichment.

1839. Upon termination of the contract of leasing, the lessee is bound to return the property to the lessor unless the contract gives him an option to acquire it.

CHAPTER IV

LEASE

SECTION I

NATURE OF LEASE

1840. Lease is a contract by which a person, the lessor, undertakes to provide another person, the lessee, in return for a rent, with the enjoyment of a movable or immovable property for a certain time.

The term of a lease is fixed or indeterminate.

1841. The lease of movable property is not presumed; a person using the property by sufferance of the owner is presumed to have borrowed it by virtue of a loan for use.

The lease of immovable property is presumed where a person occupies the premises by sufferance of the owner. The term of the lease is indeterminate; the lease takes effect with occupancy and entails the obligation to pay a rent corresponding to the rental value.

SECTION II

RIGHTS AND OBLIGATIONS RESULTING FROM LEASE

§ 1.—*General provisions*

1842. The lessor is bound to deliver the leased property to the lessee in a good state of repair in all respects and to provide him with peaceable enjoyment of the property throughout the term of the lease.

He is also bound to warrant the lessee that the property may be used for the purpose for which it was leased and to maintain the property for that purpose throughout the term of the lease.

1843. The lessee is bound to pay the agreed rent and to use the property with prudence and diligence during the term of the lease.

1844. Neither the lessor nor the lessee may change the form or destination of the leased property during the term of the lease.

1845. The lessor has the right to ascertain the condition of the leased property, to carry out work thereon and, in the case of an immovable, to have it visited by a prospective lessee or acquirer, but he is bound to exercise his right in a reasonable manner.

1846. The lessor is bound to warrant the lessee against disturbances of his right of enjoyment of the leased property.

Before pursuing his remedies, the lessee must notify the lessor of the disturbance.

1847. The lessor is not liable to reparation for injury resulting from the disturbance of enjoyment of the property by the act of a third person, unless that person is also a lessee of that property or unless he is a person whom the lessee allows to use or to have access to the property.

If the enjoyment of the property is diminished by the disturbance, however, the lessee retains his other remedies against the lessor.

1848. A lessee is bound to act in such a way as not to disturb the normal enjoyment of the other lessees.

He is liable, towards the lessor and the other lessees, to reparation for injury that may result from a violation of that obligation, whether the violation is due to his own act or to the act of persons he allows to use or to have access to the property.

In case of violation of this obligation, the lessor may demand resiliation of the lease.

1849. A lessee who is disturbed by another lessee or by persons whom another lessee allows to use or to have access to the property may obtain, according to the circumstances, a reduction of rent or the resiliation of the lease, if he notified the common lessor of the disturbance and if the disturbance persists.

He may also recover damages from the common lessor unless the lessor proves that he acted with prudence and diligence; the lessor may address the lessee at fault for compensation for the injury suffered by him.

1850. The lessee is liable to reparation for injury suffered by the lessor by reason of loss of the leased property unless he proves that the loss is not due to his fault or that of persons he allows to use or to have access to the property.

Where the leased property is an immovable, the lessee is not liable for damages resulting from a fire unless it is proved that the fire was due to his fault or that of persons he allowed to have access to the immovable.

1851. The nonperformance of an obligation by one of the parties entitles the other party to apply for, in addition to damages, specific performance of the obligation where possible. He may apply for the resiliation of the lease where the nonperformance causes serious injury to him or, in the case of the lease of an immovable, to the other occupants.

The nonperformance also entitles the lessee to apply for a reduction of rent; where the court grants it, the lessor, upon remedying his failure, is entitled to reestablish the rent for the future.

§ 2.—*Repairs*

1852. The lessor is bound, during the term of the lease, to make all necessary repairs to the leased property other than lesser maintenance repairs, which are assumed by the lessee unless they result from normal aging of the property or superior force.

1853. The lessee must allow urgent and necessary repairs to be made to ensure the preservation or enjoyment of the leased property.

A lessor who makes such repairs may require the lessee to vacate or be dispossessed of the property temporarily but, if the repairs are not urgent, he must first obtain the authorization of the court, which shall also fix the conditions required to protect the rights of the lessee.

The lessee retains, according to the circumstances, the right to obtain a reduction of rent, to apply for the resiliation of the lease or, if he vacates or is dispossessed of the property temporarily, to demand compensation.

1854. A lessee who becomes aware of a serious defect or deterioration of the leased property is bound to inform the lessor within a reasonable time.

1855. Where a lessor fails to make the repairs or improvements he is bound to make under the lease or by law, the lessee may apply to the court for authorization to carry them out himself.

If the court grants authorization to make the repairs or improvements, it shall determine their amount and fix the conditions on which they shall be carried out. The lessee may then withhold from his rent the amount of the expenses incurred to carry out the authorized work, up to the amount fixed by the court.

1856. Where the lessee has attempted to inform the lessor, or has informed him but the lessor has not acted in due course, the lessee may undertake repairs or incur expenses, even without the authorization of the court, provided they are urgent and necessary to ensure the preservation or enjoyment of the leased property. The lessor may intervene at any time, however, to pursue the work.

The lessee is entitled to reimbursement of the reasonable expenses he incurred for that purpose; he may, if necessary, withhold the amount of such expenses from his rent.

1857. The lessee is bound to render an account to the lessor of the repairs or improvements made to the property and to deliver to him the vouchers for the expenses he has incurred and, in the case of movable property, the replaced parts.

The lessor is bound to reimburse the lessee for any amount in excess of the rent withheld, but not in excess of the amount the lessee was authorized to disburse, where that is the case.

§ 3.—*Sublease of property and assignment of lease*

1858. A lessee may sublease all or part of the leased property or assign his lease. In either case, he is bound to give notice of his intention and the name and address of the intended sublessee or assignee to the lessor and to obtain his consent.

1859. The lessor cannot refuse to consent to the sublease of the property or the assignment of the lease without a serious reason.

If he refuses, he is bound to inform the lessee of his reasons for refusing within ten days after receiving the notice; otherwise, he is deemed to have consented to the sublease or assignment.

1860. A lessor who consents to the sublease of the property or the assignment of the lease cannot exact any payment other than the reimbursement of any reasonable expenses resulting from the sublease or assignment.

1861. The assignment of a lease with the consent of the lessor effects novation between the parties unless, if the lease is not of a dwelling, they agree otherwise.

1862. Where the lessor brings an action against the lessee, the sublessee cannot be bound towards the lessor for any amount except the rent for the sublease which he owes to the lessee; the sublessee cannot set up advance payments.

Payments made by the sublessee under a stipulation included in his lease and notified to the lessor, or in accordance with local usage are not considered to be advance payments.

1863. Where the nonperformance of an obligation by a sublessee causes serious injury to the lessor or the other lessees or occupants, the lessor may apply for the resiliation of the sublease.

1864. Where a lessor fails to perform his obligations, the sublessee may exercise the rights and remedies of the lessee to have them performed.

SECTION III

TERMINATION OF THE LEASE

1865. A lease with a fixed term terminates of right upon expiry of the term. A lease with an indeterminate term terminates upon resiliation by one of the parties.

1866. A lease with a fixed term may be renewed. Renewal must be express, but the lease of an immovable may be renewed tacitly.

1867. A lease is renewed tacitly where the lessee continues to occupy the premises for more than ten days after the expiry of the lease without opposition from the lessor.

In that case, the lease is renewed for one year or for the term of the initial lease, if that was less than one year, on the same conditions. The renewed lease is also subject to renewal.

1868. The term of a lease cannot exceed one hundred years. If it exceeds one hundred years, it is reduced to that term.

1869. Security given by a third person to secure the performance of the obligations of the lessee does not extend to a renewed lease.

1870. A party who intends to resiliate a lease with an indeterminate term must give the other party notice to that effect.

The term of the notice must be of the same duration as the term fixed for payment of the rent, but cannot be of more than three months. Where the leased property is a movable, the notice must be of ten days, whatever the period fixed for payment of the rent may be.

1871. A lessee against whom proceedings for resiliation of a lease are brought for non-payment of the rent may avoid the resiliation by paying, before judgment, the rent due, with interest at the rate fixed in accordance with section 28 of the Act respecting the Ministère du Revenu, and costs.

1872. A lease is not resiliated by the death of either party.

1873. Where the lease of an immovable is for a fixed term, the lessee must allow the premises to be visited and signs to be posted, for leasing purposes, during the three months preceding the expiry of the lease, or during the month preceding it if the lease is for less than one year.

Where the lease is for an indeterminate term, the lessee is bound to allow such activities from the date of the notice of resiliation.

1874. Voluntary or forced alienation of leased property or extinction of the lessor's title for any other reason does not terminate the lease of right.

1875. The acquirer or the person who benefits from the extinguishment of title may resiliate the lease, if it is a lease with an indeterminate term, in accordance with the ordinary rules pertaining to resiliation contained in this section.

In the case of the lease of an immovable with a fixed term and if more than twelve months remain from the date of alienation or extinguishment of title, he may resiliate it by giving the lessee written notice of twelve months from the date of alienation or extinguishment of title; he cannot resiliate the lease, however, if it was registered in the registry office before the deed of alienation or the deed under which the title was granted was so registered.

In the case of the lease of a movable with a fixed term, notice of one month must be given.

1876. The total expropriation of leased property terminates the lease from the date on which the expropriating party is allowed to take possession of the property in accordance with the Expropriation Act.

In the case of partial expropriation, the lessee may, according to the circumstances, obtain a reduction of rent or the resiliation of his lease.

1877. The lessor of an immovable may obtain the eviction of a lessee who continues to occupy the leased premises after the expiry

of the lease or after the date for delivery of the premises agreed upon during the term of the lease.

1878. Upon termination of the lease, the lessee is bound to deliver the property in the condition in which he received it but he is not liable for changes resulting from aging of the property or superior force.

The condition of the property may be established by the description made or the photographs taken by the parties; if it is not so established, the lessee is presumed to have received the property in good condition at the beginning of the lease.

1879. Upon termination of the lease, the lessee is bound to remove all the constructions, works or plantations he has made.

If they cannot be removed without deteriorating the property, the lessor may retain them by paying the value thereof to the lessee or compel the lessee to remove them and to restore the property to the condition in which it was when he received it.

If the property cannot be restored to its original condition, the lessor may retain the constructions, works or plantations without compensation.

SECTION IV

SPECIAL RULES RESPECTING LEASES OF DWELLINGS

§ 1.—*Application*

1880. The lease of a room, of a mobile home placed on a chassis, with or without a permanent foundation, and of land intended for the emplacement of a mobile home is deemed to be the lease of a dwelling.

The provisions of this section also govern leases relating to the services, accessories and dependencies attached to a dwelling, a room, a mobile home or land.

The provisions of this section do not apply to

(1) the lease of a dwelling leased as a vacation resort;

(2) the lease of a dwelling in which over one-third of the total floor area is used for purposes other than residential purposes;

(3) the lease of a room situated in a hotel establishment or in a health or social services establishment;

(4) the lease of a room situated in the principal residence of the lessor, if not more than two rooms are rented or offered for rent and if the room has neither a separate entrance from the outside nor sanitary facilities separate from those used by the lessor.

1881. A clause in a lease respecting a dwelling which is inconsistent with the provisions of this section or of articles 1842, 1844 to 1846, 1848 to 1850, 1853, 1856 to 1860, 1863, 1864 and 1871 is without effect.

§ 2.—*Lease*

1882. Before entering into a lease, the lessor is bound to give the lessee a copy of the by-laws of the immovable which pertain to the rules respecting the enjoyment, use and maintenance of the common premises, if any.

The by-laws form part of the lease.

1883. Within ten days after entering into the lease, the lessor is bound to give the lessee a copy of the lease or, in the case of an oral lease, a writing setting forth the name and address of the lessor, the name of the lessee and the address of the leased property, and containing the text of the particulars prescribed by regulation. The writing forms part of the lease.

Where the lease is renewed and the parties agree to modify it, the lessor is bound to give a writing evidencing the modifications to the initial lease to the lessee before the beginning of the renewal.

The lessee cannot apply for resiliation of the lease on the ground that the lessor has failed to give him the writing.

1884. At the time of entering into a lease, the lessor must give a notice to the new lessee, indicating the lowest rent paid in the twelve months preceding the beginning of the lease or the rent fixed by the court during that same period, as the case may be, and containing any other particular prescribed by regulation.

The lessor is not bound to give the notice in the case of the lease of an immovable referred to in articles 1944 and 1945.

1885. The lease and the by-laws of the immovable must be drawn up in French. They may, however, be drawn up in another language at the express wish of the parties.

1886. Every notice relating to a lease, except notice given by the lessor with a view to having access to the dwelling, must be given in writing at the address indicated in the lease or, after the lease has been entered into, at the new address of the party, if the other party has been informed of it; the notice must be drawn up in the same language as the lease and conform to the rules prescribed by regulation.

A notice that does not conform to the prescribed requirements cannot be set up against the addressee unless the person who gave it proves to the court that the addressee has not suffered any injury as a consequence.

1887. A lessor cannot refuse to enter into a lease with a person or to maintain the person in his or her rights, or impose more onerous conditions on the person for the sole reason that the person is pregnant or has one or several children, unless the refusal is warranted by the size of the dwelling; nor can he so act for the sole reason that the person has exercised his or her rights under this chapter or the Act respecting the Régie du logement.

1888. A clause which limits the liability of the lessor or exempts him from liability or renders the lessee liable to reparation for injury caused without his fault is without effect.

A clause to modify the rights of a lessee by reason of an increase in the number of occupants, unless the size of the dwelling warrants it, or to limit the right of a lessee to purchase property or obtain services from such persons as he chooses, and on such terms and conditions as he sees fit, is also without effect.

1889. A clause stipulating a penalty in an amount exceeding the value of the injury actually suffered by the lessor, or imposing an obligation on the lessee which is unreasonable in the circumstances, is an abusive clause.

Such a clause is null or any obligation arising from it may be reduced.

§ 3.—*Rent*

1890. The rent is that agreed upon in the lease.

It is payable in equal instalments, except the last, which may be less; it is payable on the first day of each payment period, unless otherwise agreed.

1891. The lessor cannot exact any instalment in excess of one month's rent; he cannot exact payment of rent in advance for more than the first payment period or, if that period exceeds one month, payment of more than one month's rent.

Nor can he exact any amount of money other than the rent, in the form of a deposit or otherwise, or demand that payment be made by postdated cheque or any other postdated instrument.

1892. A clause in a lease stipulating that the full amount of the rent will be exigible in the event of the failure by the lessee to pay an instalment is without effect.

1893. A clause in a lease with a fixed term of twelve months or less providing for a variation in the rent during the term of the lease is without effect.

A clause in a lease with a term of more than twelve months providing for a variation in the rent during the first twelve months of the lease or more than once during each twelve month period is also without effect.

1894. Where the lessor fails to perform his obligations, the lessee may apply to the court for authorization to perform them himself. The parties are then subject to the provisions of articles 1855 and 1857.

The lessee may also deposit his rent in the office of the court, if he gives the lessor prior notice of ten days indicating the grounds for depositing it and if the court, considering that the grounds are serious, authorizes the deposit and fixes the amount and conditions of the deposit.

1895. Where, following the alienation of an immovable, the registration of a hypothec against the rent or an assignment of claim, the lessee is not personally informed of the name and address of the new lessor or of the person to whom he must pay the rent, he may, with the authorization of the court, deposit his rent in the office of the court.

Deposit may also be authorized where, for any other serious reason, the lessee is not certain of the identity of the person to whom he must pay the rent or where the lessor refuses payment of the rent.

1896. The lessor may apply to the court for the recovery of the rent deposited and for a ruling on the rights of the parties.

The court shall authorize the remittance of the deposit where the person to whom the lessee must pay the rent is identified or where the lessor performs his obligations; otherwise, it may permit the lessee to continue to deposit his rent until the identification is made or until the lessor performs his obligations. The court may also authorize the remittance of the deposit to the lessee to enable him to perform the obligations of the lessor.

§ 4.—*Condition of dwelling*

1897. A lessor is bound to deliver a dwelling in good habitable condition; he is bound to maintain it in that condition throughout the term of the lease.

A stipulation whereby a lessee acknowledges that the dwelling is in good habitable condition is without effect.

1898. The lessor is bound to deliver the dwelling in clean condition and the lessee is bound to keep it so.

Where the lessor carries out work in the dwelling, he must restore it to clean condition.

1899. The following give rise to the same remedies as failure to perform an obligation under the lease:

(1) Failure on the part of the lessor or the lessee to comply with an obligation imposed by law with respect to the safety and sanitation of dwellings;

(2) Failure on the part of the lessor to comply with the minimum requirements fixed by law with respect to the maintenance, habitability, safety and sanitation of immovables comprising a dwelling.

1900. The lessor cannot offer for rent or deliver a dwelling that is unfit for habitation.

A dwelling is unfit for habitation if it is in such a condition as to be a serious danger to the health or safety of its occupants or the public, or if it has been declared so by the court or by the competent authority.

1901. A lessee may refuse to take possession of a dwelling delivered to him if it is unfit for habitation; in such a case, the lease is resiliated of right.

1902. A lessee may abandon his dwelling if it becomes unfit for habitation, but he is bound to inform the lessor of the condition of the dwelling before abandoning it or within the following ten days.

A lessee who gives such a notice to the lessor is exempt from rent for the period during which the dwelling is unfit for habitation, unless the condition of the dwelling is the result of his own fault.

1903. As soon as the dwelling becomes fit for habitation again, the lessor is bound to inform the lessee, if the lessee has given him his new address; the lessee is then bound to notify the lessor within the following ten days as to whether or not he intends to return to the dwelling.

Where the lessee has not given the lessor his new address or fails to notify him that he intends to return to the dwelling, the lease is resiliated of right and the lessor may enter into a lease with a new lessee.

1904. The court, when seized of any dispute in connection with a lease, may, even of its own motion, declare that the dwelling is unfit for habitation; it may then rule on the rent, fix the conditions necessary for the protection of the rights of the lessee and, where applicable, order that the dwelling be made fit for habitation again.

1905. The lessee may apply to the court for an order enjoining the lessor to perform his obligations regarding the condition of the dwelling, where their nonperformance threatens to make the dwelling unfit for habitation.

1906. The lessee cannot, without the consent of the lessor, use or keep in a dwelling a súbstance which constitutes a risk of fire or explosion and which would lead to an increase in the insurance premiums of the lessor.

1907. The number of occupants in a dwelling much be such as to allow every occupant to live in normal conditions as to comfort and sanitation.

1908. Where a handicapped person significantly limited in his movements occupies a dwelling, whether or not that person is the lessee, the lessor is bound, upon the application of the lessee, to identify the dwelling in accordance with the Act to secure the handicapped in the exercise of their rights.

§ 5.—*Certain changes to dwelling*

1909. No major improvements or repairs other than urgent improvements or repairs may be made in a dwelling without prior notice from the lessor to the lessee nor, if the temporary vacation of the lessee is necessary, until the lessor has offered an indemnity to him equal to the reasonable expenses he will have to incur by reason of the vacation.

1910. The notice given to the lessee must indicate the nature of the work, the date on which it is to begin and an estimation of its duration and, where required, the necessary period of vacation; it must also indicate the amount of the indemnity offered, where applicable, and any other conditions under which the work will be carried out, if it is of such a nature as to cause a substantial reduction of the enjoyment of the premises.

The notice must be given at least ten days before the date on which the work is to begin or, if a period of vacation of more than one week is necessary, at least three months before that date.

1911. The indemnity due to a lessee by reason of temporary vacation is payable on the date he vacates.

If the indemnity proves inadequate, the lessee may be reimbursed for any reasonable expenses incurred beyond the amount of the indemnity.

1912. If the notice of the lessor provides for temporary vacation, the lessee must notify the lessor within ten days after receiving it that he intends or does not intend to comply with it; otherwise, he is deemed to have refused to vacate the premises.

If the lessee refuses to vacate, the lessor may apply to the court within ten days after the refusal for a ruling on the expediency of the vacation.

1913. Where temporary vacation is not required or the lessee agrees to vacate, the lessee, within ten days after receiving the notice, may apply to the court for the modification or suppression of any abusive condition.

1914. The application of the lessor or of the lessee is heard and decided by preference. It suspends the carrying out of the work unless the court orders otherwise.

The court may impose such conditions as it considers just and reasonable.

1915. Where the court is seized of an application respecting the conditions under which work is to be carried out, the lessor has the burden of proving that the conditions are reasonable and that the vacation is necessary.

The lessee cannot contest the nature and expediency of the work.

1916. No notice is required and no contestation is allowed where the alterations made have been the subject of an agreement between the lessor and the lessee within the scope of a public housing preservation and restoration programme.

§ 6.—*Access to and visit of dwelling*

1917. Where a lessee gives notice of non-renewal or resiliation of the lease to the lessor, he is bound to allow the dwelling to be visited and signs to be posted from the time he gives the notice.

1918. The lessor is bound, except in case of emergency, to give the lessee a prior notice of twenty-four hours of his intention to ascertain the condition of the dwelling, to carry out work in the dwelling or to have it visited by a prospective acquirer.

1919. The lessee may, except in case of emergency, refuse to allow the dwelling to be visited by a prospective lessee or acquirer before 9 a.m. or after 9 p.m.; the same rule applies where the lessor wishes to ascertain the condition of the dwelling.

The lessee may, in any case, refuse to allow the dwelling to be visited if the lessor or his representative is not present at the time of the visit.

1920. The lessee cannot refuse to allow the lessor to have access to the dwelling to carry out work.

He may deny him access before 7 a.m. and after 7 p.m., however, unless the work is urgent.

1921. No lock or other device restricting access to a dwelling may be installed or changed without the consent of the lessor and the lessee.

If either party fails to comply with his obligation, the court may order him to allow the other party to have access to the dwelling.

1922. The lessor cannot prohibit a candidate in a provincial, federal, municipal or school election, an official delegate appointed by a national committee or the authorized representative of either from having access to the immovable or dwelling for the purposes of an election campaign or a legally constituted referendum.

§ 7.—*Right of maintenance in occupancy*

I — Holders of the right

1923. Every lessee has a personal right of maintenance in occupancy; he cannot be evicted from the leased dwelling, except in the cases provided for by law.

1924. The voluntary or forced alienation of an immovable comprising a dwelling or the extinguishment of the title of the lessor does not permit the new lessor to resiliate the lease, which is continued and may be renewed in the same manner as any other lease.

The new lessor has, towards the lessee, the rights and obligations resulting from the lease.

1925. The spouse of a lessee or a person who has been living with a lessee for at least six months, being the concubinary or blood relative of the lessee or a person connected to him by marriage, is entitled to maintenance in occupancy if he continues to occupy the dwelling after the cessation of cohabitation and gives notice to that effect to the lessor within two months after the cessation of cohabitation. He becomes the lessee from that moment.

A person living with the lessee at the time of death of the lessee has the same right and becomes the lessee if he continues to occupy the dwelling and gives notice to that effect to the lessor within two months after the death. If the person does not avail himself of this right, the liquidator of the succession or, failing him, an heir may resiliate the lease by giving notice of one month to that effect to the lessor.

1926. If no one is living with the lessee at the time of his death, the liquidator of the succession or, failing him, an heir may resiliate the lease by giving notice of three months to the lessor within six months after the death.

1927. The sublessee of a dwelling is not entitled to maintenance in occupancy.

The sublease of a dwelling terminates on the same date as the lease of the dwelling, but the sublessee is not required to leave it before receiving notice of ten days to that effect from the sublessor or, failing him, from the principal lessor.

1928. Neither the lessor nor any other person may harass a lessee who exercises his right of maintenance in occupancy in such a manner as to limit his right to peaceable enjoyment of the premises or to induce him to leave the dwelling.

A lessee who suffers harassment may apply to the court for an order to the lessor or any other person who has harassed him to pay punitive damages.

II — Renewal and modification of lease

1929. A lessee entitled to maintenance in occupancy and having a lease with a fixed term is entitled of right to its renewal at term.

The lease is renewed at term on the same conditions and for the same term or, if the term of the initial lease exceeds twelve months, for a term of twelve months. The parties may, however, agree on a different renewal term.

1930. At the renewal of the lease, the lessor may modify its conditions, particularly the term or the rent, but only if he gives notice of the modification to the lessee not less than three months nor more than six months before term.

If the term of the lease is less than twelve months, the notice must be given not less than one month nor more than two months before term.

1931. A lessor cannot modify a lease with an indeterminate term unless he gives the lessee a notice of not less than one month nor more than two months.

The notice is of not less than ten days nor more than twenty days in the case of the lease of a room.

1932. A notice of modification with a view to increase of the rent must indicate the new proposed rent in dollars or the amount of the increase expressed in dollars or as a percentage of the current rent. The increase may be expressed as a percentage of the rent to be determined by the court, where an application for the fixing or review of the rent has been filed.

The notice must also indicate the proposed term of the lease where the lessor proposes to modify it.

1933. The lessor may avoid the renewal of the lease where the lessee has subleased the dwelling for more than twelve months by giving notice, within the same time as for modification of the lease, of his intention to terminate it to the lessee and to the sublessee.

The lessor may similarly avoid the renewal of the lease where the lessee has died and no one was living with him at the time of the death, by giving the notice to the heir or to the liquidator of the succession.

1934. A lessee who objects to the modification proposed by the lessor is bound to notify the lessor, within one month after receiving the notice of modification of the lease, that he objects or that he is vacating the dwelling; otherwise, he is deemed to have agreed to the renewal of the lease on the conditions proposed by the lessor.

In the case of a lease of a dwelling described in article 1944, however, the lessee must vacate the dwelling upon termination of the lease if he objects to the proposed modification.

1935. A lessee may avoid the renewal of a lease with a fixed term or terminate a lease with an indeterminate term by giving notice of non-renewal or resiliation of the lease to the lessor, within the same time as a lessor giving notice of modification.

III — Fixing conditions of lease

1936. Where a lessee objects to the proposed modification, the lessor may apply to the court, within one month after receiving the notice of objection, for the fixing of the rent or for a ruling on any other modification of the lease, as the case may be; otherwise, the lease is renewed of right on the same conditions as those of the initial lease.

1937. A lessee who has subleased his dwelling for more than twelve months, or an heir or the liquidator of the succession of a lessee who has died may, within one month after receiving notice of the intention of the lessor to avoid the renewal of the lease, contest the notice on its merits before the court; otherwise, he is deemed to have agreed to terminate the lease.

Where the court grants the application of the lessee after the expiry of the time for giving notice of modification of the lease, the lease is renewed but the lessor may, within one month after the final judgment, apply to the court for the fixing of a new rent.

1938. Where the lease provides for the adjustment of the rent, the parties may apply to the court to contest the excessive or inadequate nature of the proposed or agreed adjustment and for the fixing of the rent.

The lessee must apply within one month after receiving the notice of adjustment.

1939. A new lessee or a sublessee may apply to the court for the fixing of the rent if his rent is higher than the lowest rent paid during the twelve months preceding the beginning of the lease or sublease, as the case may be, unless that rent has already been fixed by the court.

The new lessee or sublessee must apply within ten days after the lease or sublease has been entered into. If he has not received the notice indicating the lowest rent paid in the preceding year, he must apply within two months after the beginning of the lease or sublease; where the lessor has given a notice containing a false statement, the new lessee or sublessee must apply within two months after becoming aware of that fact.

1940. A person entitled by law to maintenance in occupancy and to become lessee upon the cessation of cohabitation with the lessee or the death of the lessee is not considered to be a new lessee.

1941. Where the court authorizes the modification of a condition of a lease, it shall fix the rent payable for the dwelling, taking into consideration the relative value of the modification in relation to the rent for the dwelling.

1942. Where the court is seized of an application for the fixing or adjustment of rent, it shall take into consideration such standards as are prescribed by regulation.

The rent fixed by the court shall be in force for the term of the renewed lease or for such term, not in excess of twelve months, as it determines.

If the court grants an increase of rent, it may spread the payment of the arrears over a period not exceeding the term of the renewed lease.

1943. Where the rent has been fixed on the application of a new lessee and the term of the lease exceeds twelve months, the court shall fix the rent for the term of the lease but the lessor may have it fixed annually.

The application must be made three months before the expiry of each period of twelve months from the date on which the fixed rent took effect.

1944. Neither the lessor nor the lessee of a dwelling erected pursuant to a plan for the elimination of slums and the construction of sanitary housing in the city of Montréal, or of a dwelling leased by a housing cooperative to one of its members may apply to the court for the fixing of the rent or the modification of any other condition of the lease.

Nor may the lessor or the lessee of a dwelling situated in a recently erected immovable or an immovable used for renting as a result of a recent change of destination pursue the remedy referred to in the first paragraph within five years after the date on which the immovable is ready for its intended use.

The lease of such a dwelling must mention such restrictions.

1945. The lessor or lessee of a dwelling in low-rental housing cannot apply for the fixing of the rent or for the modification of any other condition of the lease except in accordance with the provisions specific to that type of lease.

The lessor is not bound to indicate the new rent or the amount of the increase in the notice of increase of the rent.

IV — Repossession of a dwelling and eviction

1946. Where the lessor of a dwelling is the owner of the dwelling, he may repossess it as a residence for himself or for his ascendants or descendants in the first degree or for any other relative or person connected by marriage of whom he is the main support.

He may also repossess the dwelling as a residence for his spouse, from whom he is separated or divorced, if he remains the main support of his spouse.

1947. The owner of an undivided share of an immovable cannot repossess any dwelling in the immovable unless the only other owner is his spouse or his concubinary.

1948. The lessor of a dwelling may evict the lessee to divide the dwelling, enlarge it substantially or change its destination.

1949. A lessor wishing to repossess a dwelling or to evict a lessee must notify him at least six months before the expiry of the

lease in the case of a lease with a fixed term; if the term of the lease is six months or less, the notice is of one month.

In the case of a lease with an indeterminate term, the notice must be given six months before the date of repossession or eviction.

1950. A notice of repossession must indicate, where applicable, the name of the beneficiary of the repossession, the degree of relationship or the bond between the beneficiary and the lessor and the date fixed for repossession.

A notice of eviction must indicate the reason and the date of eviction.

Repossession or eviction may take effect on a later date, however, upon the application of the lessee and with the authorization of the court.

1951. Within one month after receiving notice of repossession, the lessee is bound to notify the lessor as to whether or not he intends to comply with the notice; otherwise, he is deemed to refuse to vacate the dwelling.

1952. If the lessee refuses to vacate the dwelling, the lessor may repossess it with the authorization of the court.

Application for authorization must be made within one month after the refusal by the lessee; the lessor must show the court that he really intends to repossess the dwelling for the purpose mentioned in the notice and not as a pretext for other purposes.

1953. The lessor cannot, without the consent of the lessee, avail himself of the right to repossess the dwelling where he owns another dwelling that is vacant or offered for rent on the date fixed for repossession, and that is of the same type as that occupied by the lessee, situated in the same neighbourhood and at equivalent rent.

1954. The lessor must pay an indemnity equal to three months' rent and reasonable moving expenses to the evicted lessee. If the lessee considers that the injury he sustains warrants a greater amount of damages, he may apply to the court for the fixing of the amount of the indemnity.

The indemnity is payable at the expiry of the lease; the moving expenses are payable on presentation of vouchers.

1955. Within one month after receiving the notice of eviction, the lessee may apply to the court to object to the division, enlargement or change of destination of the dwelling; otherwise, he is deemed to have consented to vacate the premises.

Where an objection is brought, the burden is on the lessor to show that he really intends to divide, enlarge or change the destination of the dwelling and that he is permitted to do so by law.

1956. Where the court authorizes repossession or eviction, it may impose such conditions as it considers just and reasonable.

In the case of repossession, the court may, in particular, order the lessor to pay to the lessee an indemnity equal to reasonable moving expenses.

1957. The lessee may recover damages resulting from repossession or eviction in bad faith, whether or not he has consented to it.

He may also apply for punitive damages against the person who has repossessed the dwelling or evicted him in bad faith.

1958. Where the lessor does not exercise his right of repossession or eviction on the fixed date, the lease is renewed of right provided the lessee continues to occupy the dwelling with the consent of the lessor. In that case, the lessor, within one month after the date fixed for repossession or eviction, may apply to the court for the fixing of a new rent.

The lease is also renewed where the court dismisses an application for the repossession or eviction. The application for the fixing of the rent must, in that case, be presented to the court within one month after the final decision.

1959. A dwelling that has been subject to repossession or eviction cannot, without the authorization of the court, be leased or used for a purpose other than that for which the right was exercised.

If the court gives authorization to lease the dwelling, it shall fix the rent.

§ 8.—*Resiliation of lease*

1960. The lessor may obtain the resiliation of the lease if the lessee is over three weeks late in paying the rent or is frequently late in paying it.

1961. The lessor or the lessee may apply for the resiliation of the lease if the dwelling becomes unfit for habitation.

1962. Where either of the parties applies for the resiliation of the lease, the court may grant it immediately or order the debtor to perform his obligations within the period it determines, except where payment of the rent is over three weeks late.

Where the debtor does not comply with the decision of the court, the court shall resiliate the lease on the application of the creditor.

1963. A lessee may resiliate the current lease if he is allocated a dwelling in low-rental housing or if, by reason of a decision of the court, he is relocated in an equivalent dwelling corresponding to his needs; he may also resiliate the current lease if, suffering from a handicap, he can no longer occupy his dwelling, if he is admitted to a reception centre, a foster home for the aged or a dwelling erected pursuant to a plan for the elimination of slums and the construction of sanitary housing in the city of Montréal.

Unless otherwise agreed by the parties, resiliation takes effect three months after the sending of a notice to the lessor, with an attestation from the authority concerned, or one month after the notice if the lease is for an indeterminate term or a term of less than twelve months.

1964. The lease is resiliated of right where a lessee abandons the dwelling without any reason, taking his movable effects with him, or where the dwelling is unfit for habitation and the lessee abandons it without notifying the lessor.

1965. An employer may, where an employee ceases to be in his employ, resiliate a lease that is accessory to the contract of employment by giving the employee prior notice of one month, unless otherwise stipulated in the contract.

An employee may resiliate such a lease upon the termination of the contract of employment by giving prior notice of one month to his employer, unless otherwise stipulated in the contract.

1966. The lessee, on resiliation of the lease or when he vacates the dwelling, must leave it free of all movable effects except those which belong to the lessor. If the lessee leaves movable effects at the end of the lease or after abandoning the dwelling, the lessor may dispose of them in accordance with the rules prescribed in the Book on Obligations which apply to the holder of property entrusted and forgotten.

§ 9.—*Special provisions respecting certain leases*

I — Lease with an educational institution

1967. Every person pursuing studies who leases a dwelling from an educational institution is entitled to maintenance in occupancy for any period during which he is enrolled in the institution as a full-time student.

However, a person having a lease for the summer period only is not entitled to maintenance in occupancy.

1968. A person pursuing studies who wishes to avail himself of the right to maintenance in occupancy must give notice of one month before the expiry of the lease that he intends to renew it.

The educational institution may, however, for serious reasons, relocate the person in a dwelling of the same type as that which he occupies, situated in the same neighbourhood and at equivalent rent.

1969. A person pursuing studies cannot sublease the dwelling or assign his lease.

1970. The educational institution may resiliate the lease of a person who ceases to be a full-time student at that institution. It must give him prior notice of one month, which may be contested on its merits. The person pursuing studies may, similarly, resiliate the lease.

1971. The lease of a person pursuing studies is resiliated of right when he ends his studies or ceases to be enrolled in the educational institution.

II — Lease of a dwelling in low-rental housing

1972. A dwelling situated in low-rental housing owned or administered by the Société d'habitation du Québec or by a legal person whose operating expenses are met, in whole or in part, by a subsidy from the Société d'habitation du Québec, or a dwelling which is not so situated but the rent of which is fixed by by-law of the Société d'habitation du Québec is a dwelling in low-rental housing.

A dwelling for which the Société d'habitation du Québec agrees to pay an amount toward the rent is also a dwelling in low-rental housing but, in this case, the provisions pertaining to the register of lease applications and to the eligible list do not apply where the lessee

is selected by an association that is a legal person constituted for that purpose under the Act respecting the Société d'habitation du Québec.

1973. The lessor of a dwelling in low-rental housing must keep an up-to-date register of lease applications and an eligible list for the lease of a dwelling, in accordance with the by-laws of the Société d'habitation du Québec and with any by-law made by the lessor himself as authorized by and pursuant to the by-laws of the Société d'habitation du Québec.

Where a dwelling is vacant, the lessor must offer it to a person entered on the eligible list according to the conditions prescribed in the by-laws.

1974. If a lessor refuses to enter the application of a person in the register or to enter his name on the eligible list, the person may apply to the court within one month after the refusal for a review of the decision.

A person whose name is removed from the list or entered on the list for a dwelling of a category or subcategory other than that to which he is entitled may also, within one month after the decision, apply to the court to have the decision of the lessor revised.

In such cases, the lessor has the burden of establishing that he acted within the conditions prescribed in the by-laws. The court may, as the case may be, order the application entered in the register or the name of the person entered, re-entered or reclassified on the eligible list.

1975. If the lessor assigns a dwelling to a person other than the person entitled to it under the by-laws, the person entitled to the dwelling may apply to the court within one month thereafter for a review of the decision.

The lessor has the burden of establishing that he acted within the conditions prescribed in the by-laws; if he fails to do so, the court may order him to house the person in a dwelling of the category to which he is entitled or, if none is vacant, to assign him the next dwelling of that category that becomes vacant. The court may also, in case of emergency, particularly where the person is homeless, order the lessor to house him in an equivalent dwelling, whether in low-rental housing or not, corresponding to the category of dwelling to which he is entitled. If the rent for that dwelling is higher than the rent the person would have paid for the dwelling he is entitled to, the lessor is bound to pay the excess amount.

1976. Where a dwelling in low-rental housing is assigned following a false statement of the lessee, the lessor may, within two months after becoming aware of the false statement, apply to the court for the resiliation of the lease or the modification of certain conditions of the lease if, were it not for the false statement, he would not have assigned the dwelling to the lessee or would have done so on different conditions.

1977. A lessee who occupies a dwelling of a category other than that to which he is entitled may apply to the lessor to have his name re-entered on the eligible list.

If the lessor refuses to re-enter the lessee's name or assigns him a dwelling of a category other than that to which he is entitled, the lessee may apply to the court to contest his decision within one month after receiving notice of the refusal or the assignment of the dwelling.

1978. The lessor may, at any time, relocate a lessee who occupies a dwelling of a category other than that to which he is entitled in a dwelling of the appropriate category or subcategory on giving him three months' notice.

The lessee may apply to the court for review of the decision within one month after receiving the notice.

1979. If a person who benefits from the right to maintenance in occupancy ceases to cohabit with the lessee or if the lessee dies, that person is not entitled to renewal of the lease of right if he no longer meets the conditions prescribed in the by-laws.

The lessor may, in such a case, resiliate the lease by giving the person three months' notice before termination of the lease.

1980. If the rent is not fixed in accordance with the by-laws of the Société d'habitation du Québec, the lessee may apply to the court, within two months after the fixing of the rent, for its review.

1981. A lessee, within one month after receiving notice of modification of the term or of another condition of the lease, may apply to the court for a ruling on the requested term or modification; otherwise, he is deemed to consent to the new conditions.

A person who benefits from the right to maintenance in occupancy and who receives a notice of resiliation of the lease may, similarly, contest the resiliation on its merits before the court; otherwise, he is deemed to have agreed to it.

1982. The lessor, at the request of a lessee who has suffered a reduction of income or a change in the composition of his household, is bound to reduce his rent during the term of the lease in accordance with the by-laws of the Société d'habitation du Québec; if he refuses or neglects to do so, the lessee may apply to the court for the reduction.

If the income of the lessee returns to or becomes greater than what it was, the former rent is re-established; the lessee may contest the re-establishment of the rent within one month after it is re-established.

1983. The lessee of a dwelling in low-rental housing cannot sublease the dwelling or assign his lease.

He may resiliate the lease at any time by giving three months' notice to the lessor.

III — Lease of land intended for installation of mobile home

1984. The lessor of land intended for the installation of a mobile home is bound to deliver the land and maintain it in accordance with the development standards prescribed by law. These obligations form part of the lease.

1985. The lessor cannot require that he, the lessor, shall remove the mobile home of the lessee.

1986. The lessor cannot limit the right of the lessee of the land to replace his mobile home by another mobile home of his choice.

The lessor cannot limit the right of the lessee to alienate or lease his mobile home; nor can he require that he, the lessor, shall act as the mandatary or shall select the person to act as the mandatary of the lessee for the alienation or lease of the mobile home.

A lessee who alienates his mobile home must, however, notify the lessor of the land immediately.

1987. The lessor cannot require any amount of money from the lessee by reason of the alienation or lease of the mobile home, unless he acts as the mandatary of the lessee for alienation or lease.

1988. The acquirer of a mobile home situated on leased land has, towards the lessor, the rights and obligations resulting from the lease of the land, unless he notifies the lessor of his intention to leave the premises within one month after the acquisition.

CHAPTER V

AFFREIGHTMENT

SECTION I

GENERAL PROVISIONS

1989. Affreightment is a contract by which a person, the lessor, for remuneration called freight, undertakes to place all or part of a ship at the disposal of another person, the charterer, for navigation.

The contract, if in writing, is evidenced by a charterparty containing the names of the parties, their undertakings under the contract and particulars identifying the ship.

1990. The charterer is bound to pay freight. If no freight has been agreed, he must pay an amount consistent with market conditions, at the place and time of the contract.

1991. Where the lessor has not been paid at the time of discharge of the cargo from the ship, he may retain the property carried until payment of what is due to him, including the reasonable expenses and damage resulting from the retention. He cannot, however, retain the property aboard his ship, but must place it in the hands of a third person.

1992. General average is governed by conventional maritime rules and customs at the place and time of the contract.

1993. The charterer may sublet the ship with the consent of the lessor or use it for carriage under bills of lading; in either case, he remains liable to the lessor for his obligations under the contract of affreightment.

The lessor may, to the extent of what is due to him by the charterer, bring action against the subcharterer for payment of the freight due by the latter, but the subletting of the ship establishes no other direct relationship between the lessor and the subcharterer.

1994. Prescription of an action arising out of a contract of affreightment runs, in the case of a bareboat or time charter, from the expiry of the contract or permanent interruption of its performance or, in the case of a voyage charter, from the complete discharge of the property carried or the event which put an end to the voyage.

Prescription of an action arising out of a contract for the subletting of a ship runs likewise.

SECTION II

SPECIAL RULES GOVERNING DIFFERENT CONTRACTS OF AFFREIGHTMENT

§ 1.—*Bareboat charter*

1995. A bareboat charter is a contract of affreightment by which a lessor places an unmanned and unequipped or partly manned and partly equipped ship at the disposal of a charterer for a determinate time, and transfers to him the navigation, management, employment and agency of the ship.

1996. The lessor shall deliver the ship in a seaworthy condition and fit for the service for which it is intended, at the agreed place and time.

1997. The charterer may use the ship for any purpose for which it is intended, but the lessor may stipulate restrictions as to the use of the ship.

1998. The charterer may use the ship's stores and equipment.

He shall insure the ship and bear all operating costs. He shall hire and maintain the crew.

1999. The charterer is bound to warrant the lessor against all remedies of third persons arising out of the operation of the ship.

2000. The charterer is bound to maintain the ship and make the necessary repairs and replacements.

The lessor is bound to make the repairs and replacements required by inherent defects which appear within one year after delivery of the ship to the charterer and if the ship is detained for more than twenty-four hours by reason of such a defect, no freight is payable by the charterer during the detention.

2001. At the expiry of the contract, the charterer shall return the ship at the place where it was delivered and in the state in which it was delivered; he is not bound to indemnify the lessor for fair wear and tear of the ship, stores and equipment.

He is bound, however, to return stores, provisions and equipment in quantity and of quality identical to those he received when the ship was delivered to him.

2002. Where the charterer returns the ship late, he shall pay to the lessor an indemnity calculated, for the first fifteen days on the basis of the freight and, thereafter, on the basis of double the freight, unless the lessor proves that he has suffered greater loss.

§ 2.—*Time charter*

2003. A time charter is a contract of affreightment by which a lessor places a fully-equipped and manned ship at the disposal of a charterer for a fixed time and under which he retains the navigation and management of the ship but transfers its employment and agency to the charterer.

2004. The lessor shall deliver the ship in a seaworthy condition and properly manned and equipped for the service for which it is intended, at the agreed place and time.

2005. The charterer bears the cost of the commercial operation of the ship, in particular dock dues, pilotage and canal dues.

He shall also pay for the fuel on board when the ship is delivered to him and thereafter provide and pay for fuel of such a grade as to ensure the proper working of the ship.

2006. The master of the ship shall, within the limits stipulated in the contract, follow the instructions of the charterer with respect to the employment and agency of the ship.

If the instructions are inconsistent with the rights of the lessor under the contract, the master may refuse to follow them. If he follows them, he does so without prejudice to the lessor's remedy against the charterer.

2007. The charterer shall indemnify the lessor for any loss or damage caused to the ship as a result of its commercial operation, fair wear and tear excepted.

2008. Freight runs from the day the ship is delivered to the charterer, in accordance with the terms of the contract.

Freight is payable until the day the ship is returned to the lessor; it is not payable, however, for periods during which the working of the ship is prevented by accident or by a cause imputable to the lessor.

2009. The charterer shall return the ship at the agreed place and within the agreed time; he shall give reasonable prior notice to the lessor.

§ 3.—*Voyage charter*

2010. A voyage charter is a contract of affreightment by which a lessor places all or part of a fully-equipped and manned ship at the disposal of a charterer for the carriage of cargo on one or more voyages and under which he retains the navigation, management, employment and agency of the ship.

The contract specifies the nature and quantity of the cargo as well as the place of loading and discharge and the time allowed for those operations.

2011. The lessor shall present the ship in a seaworthy condition and properly manned and equipped for the voyage, at the agreed place and time.

Moreover, he is bound to maintain the ship in a seaworthy condition and to use all diligence within his means to prosecute the voyage.

2012. The lessor is responsible, within the limits stipulated in the contract, for loss or damage of the property received on board. He may, however, relieve himself from liability by proving that the damage did not result from failure on his part to perform his obligations.

2013. The charterer is bound to load cargo of the agreed quality in the agreed quantity; if he does not, he is nevertheless bound to pay the stipulated freight.

Notwithstanding the foregoing, the charterer may resiliate the contract before loading begins; in that case, he shall pay to the lessor an indemnity equal to the loss he suffers, but in no case greater than the amount of the freight.

2014. The charterer shall load and discharge the cargo within the time allowed by the contract or, failing such a stipulation, within a reasonable period or according to the custom of the port.

Where the periods for loading and discharging are fixed separately by the contract, they cannot be reversed and the time used for each operation is computed separately.

2015. The time for loading or discharging runs from the moment the lessor informs the charterer that the ship is ready to load or ready to discharge, after its arrival at port.

2016. Where the time allowed for loading or discharging is exceeded for any reason not imputable to the lessor, the charterer shall pay demurrage from the expiry of the allowed time; demurrage shall be considered a supplement to freight and is payable for the entire additional time actually required for loading or discharging.

Demurrage not fixed by the contract shall be calculated at a reasonable rate, according to the custom of the port of loading or discharge or, failing that, according to general custom.

2017. Freight is payable on completion of the voyage. However, it is not due in all circumstances.

Where completion of the voyage is prevented, the charterer is bound to pay freight only if it was prevented by a cause not imputable to the lessor. In that case, freight is due only proportionately to the distance travelled.

2018. The contract is resolved by operation of law, with no claim for damages on either part, if superior force prevents the voyage before its commencement.

Notwithstanding the foregoing, the contract stands if superior force prevents the sailing of the ship or the prosecution of the voyage for a time only; in that case, no reduction of freight or damages may be claimed by reason of the delay.

2019. Where the cargo is delivered by the lessor to a person other than the charterer, the charterer is not bound to pay the sums due to the lessor unless the latter, despite his diligence, is unable to obtain payment by exercising his right of retention.

CHAPTER VI

CARRIAGE

SECTION I

RULES APPLICABLE TO ALL MEANS OF TRANSPORTATION

§ 1.—*General provisions*

2020. A contract of carriage is a contract by which one person, the carrier, undertakes principally to carry a person or property from one place to another, in return for a price which another person, the passenger or the shipper or receiver of the property, undertakes to pay at the agreed time.

2021. Successive carriage is effected by several carriers in succession, using the same means of transportation; combined carriage is effected by several carriers in succession, using different means of transportation.

2022. Gratuitous carriage of a person or property is not governed by the rules contained in this chapter and the carrier is bound only by an obligation of prudence and diligence.

2023. A carrier who provides services to the general public shall carry any person requesting it and any property he is requested to carry, unless he has serious cause for refusal; the passenger, shipper or receiver is bound to follow the instructions given, according to law, by the carrier.

2024. A carrier cannot exclude or limit his liability except to the extent and subject to the conditions established by law.

He is liable to reparation of any injury resulting from delay, unless he proves superior force.

2025. Where the carrier entrusts another carrier with the performance of all or part of his obligation, the substitute carrier is deemed to be a party to the contract.

§ 2.—*Carriage of persons*

2026. Carriage of persons includes, in addition to carriage itself, embarking and disembarking operations.

2027. The carrier is bound to take his passengers safe and sound to their destination.

The carrier is liable to reparation for injury suffered by a passenger unless he proves it was caused by superior force or by the state of health or fault of the passenger. Even in the case of superior force, the carrier is liable to reparation where the injury is caused by his state of health or that of one of his servants or by the condition or working of the vehicle.

2028. The carrier is liable for any loss of the luggage or other effects placed in his care by a passenger, unless he proves superior force, an inherent defect in the property or the fault of the passenger.

However, the carrier is not liable for any loss of documents, money or other property of great value, unless he agreed to carry the property after its nature or value was declared to him; moreover, the carrier is not liable for any loss of hand luggage or other effects which remain in the care of the passenger, unless the passenger proves the fault of the carrier.

2029. In the case of successive or combined carriage of persons, the carrier who effects the carriage during which the loss occurs is liable therefor, unless one of the carriers has, by express stipulation, assumed liability for the entire journey.

§ 3.—*Carriage of property*

2030. Carriage of property extends from the time the carrier receives the property into his charge for carriage until its delivery.

2031. A bill of lading is a writing which evidences a contract for the carriage of property.

The bill of lading shall state the names of the shipper, receiver and carrier and, where applicable, of the person who is to pay the freight and carriage charges. It shall also state the place and date of receipt of the property by the carrier into his charge, the points of origin and destination, the freight as well as the nature, quantity, volume or weight, and apparent condition of the property and any dangerous properties it may have.

2032. The bill of lading shall be issued in several copies; the issuing carrier shall keep a copy and give one to the shipper; another copy must accompany the property to its destination.

In the absence of any evidence to the contrary, the bill of lading is proof of the receipt of the property by the carrier into his charge and of its nature, quantity and apparent condition.

2033. A bill of lading is not negotiable, unless otherwise provided by law or by the contract.

Negotiation of a negotiable bill of lading is effected by endorsement and delivery, or by mere delivery if the bill is made to bearer.

2034. The carrier is bound to deliver the property to the receiver or, in the case of a negotiable bill of lading, to its holder.

The holder of a negotiable bill of lading must hand it over to the carrier when he demands delivery of the property.

2035. Subject to the rights of the shipper, the receiver upon accepting the property or the contract acquires the rights and assumes the obligations arising out of the contract.

2036. Where the property cannot be delivered to the place specified in the contract, the carrier is bound to notify the receiver of the arrival of the property and of the time allowed to remove it.

2037. Where the receiver cannot be found or refuses or neglects to take delivery of the property or where, for any other reason, the carrier cannot deliver the property through no fault of his own, the carrier shall notify the shipper without delay and request instructions as to disposal of the property; in an emergency, however, the carrier may dispose of perishable property without notice.

If the carrier receives no instructions within fifteen days of notification, he may return the property to the shipper at the shipper's expense or dispose of it in accordance with the rules contained in Book Five, Property concerning the holder of property entrusted and forgotten.

2038. From the expiry of the time allowed for removal or from notification of the shipper, the obligations of the carrier are those of a gratuitous depositary; he is entitled, however, to reasonable remuneration for the preservation and storage of the property, payable by the receiver or, failing him, by the shipper.

2039. The carrier is bound to carry the property to its destination.

He is liable to reparation for any injury resulting from the carriage, unless he proves that the loss was caused by superior force, an inherent defect in the property or natural shrinkage.

2040. Prescription of any action in damages against a carrier runs from the delivery of the property or from the date on which it should have been delivered.

No action is admissible unless a notice of the claim is priorly given to the carrier in writing within sixty days after the delivery of the property or within nine months after the date on which it should have been delivered, whether or not the loss is apparent. No notice is required if the action is brought within that time.

2041. In the case of successive or combined carriage, the carrier with whom the contract was made or the last carrier is liable to reparation of damage which occurs during carriage, without prejudice to his remedy against the person who caused the damage.

However, the carrier chosen by the shipper is alone liable to him.

2042. The liability of the carrier, in the case of loss, cannot exceed the value of the property, as declared by the shipper.

If no value has been declared, it shall be established on the basis of the value of the property at the place and time of shipment.

2043. No carrier is bound to carry documents, money or property of great value.

If a carrier agrees to carry that type of property, he is not liable for loss unless its nature or value has been declared to him; any declaration which is deliberately misleading as to the nature of the property or deliberately inflates its value exempts the carrier from all liability.

2044. A shipper who places dangerous property into the charge of a carrier without prior disclosure of its exact nature shall indemnify the carrier for any loss he suffers by reason of carriage of the property.

Moreover, the shipper shall pay any storage charges and assume all risks.

2045. The shipper is bound to compensate any loss suffered by the carrier as a result of an inherent defect in the property or any omission, deficiency or inaccuracy in the shipper's declarations as to the property carried.

2046. The freight and carriage charges are payable before delivery, unless otherwise stipulated in the bill of lading.

In either case, if the property is not as described in the contract or if its value is greater than the declared amount, the carrier may claim the amount he could have charged for its carriage.

2047. Where the price of the property carried is payable on delivery, the carrier shall not deliver the property until he receives payment.

Unless the shipper has otherwise instructed on the bill of lading, the charges are paid by the receiver.

2048. The carrier may retain the property carried until the freight, the carriage charges and any reasonable storage charges are paid.

If, according to the shipper's instructions, those amounts are payable by the receiver and the carrier does not demand payment according to instructions, he loses his right to claim payment from the shipper.

SECTION II

SPECIAL RULES GOVERNING CARRIAGE OF PROPERTY BY WATER

§ 1.—*General provisions*

2049. Unless otherwise agreed by the parties, this section applies to carriage of property by water where the ports of sailing and of destination are situated in Québec.

2050. Carriage of property extends from the time the carrier receives the property into his charge until its delivery.

§ 2.—*Obligations of parties*

2051. Freight is payable by the shipper.

Freight is also payable by the receiver where he takes delivery of property in respect of which freight is payable on arrival.

2052. The shipper shall present the property at the time and place fixed by agreement between the parties or according to the

custom of the port of loading, failing which he shall pay to the carrier an indemnity equal to the loss he suffers, but in no case greater than the amount of the freight.

2053. At the beginning of the voyage and even before, the carrier is bound to exercise diligence to make the ship seaworthy, properly man, equip and supply it, and make fit and safe all parts of the ship where property is to be loaded and kept during the voyage.

2054. The carrier is bound to properly load, handle, stow, carry, keep and discharge the property carried.

Except in the coasting trade, a fault is committed by the carrier if, without the consent of the shipper and in the absence of rules or custom so permitting, he stows the property on deck. Consent is presumed where containers are loaded on a ship fitted for the carriage of containers.

2055. The carrier shall issue to the shipper, at his request, a bill of lading based on the declarations of the shipper.

In addition to the usual particulars, the bill of lading must contain entries allowing the property to be carried to be clearly identified, including the leading marks appearing on it, and any relevant information.

The carrier may refuse to include in the bill of lading any particular the accuracy of which he has reasonable ground for suspecting or which he has had no means of checking.

2056. The shipper is warrantor for accuracy of his declarations at the time of shipment and is liable for any injury the carrier may suffer as a result of inaccuracies in his declarations.

The carrier may exercise his rights under this article against no other than the shipper.

2057. Where the nature or value of the property is knowingly misstated by the shipper, the carrier is not liable for any loss.

2058. Removal of the property shall be prima facie evidence of delivery of the property to the receiver in the condition indicated in the bill of lading or, failing such an indication, in its condition at the time of shipment, unless the receiver gives notice in writing to the carrier or his representative at the port of discharge, of any loss of the property, not later than upon removal or, if the loss is not apparent, not later than three days after removal.

The carrier and the receiver may, at the time of removal, require a statement as to the condition of the property.

2059. In the case of any actual or apprehended loss of the property, the carrier and the receiver shall give each other facilities for inspecting and tallying the items of property.

2060. Any stipulation in a contract whereby the carrier or the lessor is relieved from the obligation to make reparation for injury resulting from the loss sustained by the property carried, except in the case of carriage of live animals or property stowed on deck other than containers loaded on a ship fitted for the carriage of containers, is null.

Any clause assigning the benefit of insurance to the carrier or any similar clause shall be considered to be a stipulation relieving the carrier from liability.

2061. The carrier is liable for any loss sustained by the property from the time he receives it into his charge until delivery.

He is liable, in particular, for any loss resulting from unseaworthiness unless he proves that he exercised diligence to make the ship seaworthy.

2062. The carrier is not liable for any loss of the property resulting from

(1) fault in the navigation and management of the ship by the master, pilot or other servants of the carrier;

(2) fire, unless caused by an act or the fault of the carrier;

(3) superior force;

(4) fault of the owner of the property or shipper, particularly in packing, packaging or marking the property;

(5) an inherent defect in the property or natural shrinkage;

(6) an act or attempt to save life or property in the course of a carriage or a deviation for that purpose.

2063. The shipper is not liable for any injury suffered by the carrier or for any damage caused to the ship, if it is not due to his fault or that of his servants.

2064. The carrier is liable for any loss of the property carried up to the amount fixed by government regulation, unless a higher indemnity has been fixed by agreement between him and the shipper.

He may be held liable beyond the amount fixed by regulation if he committed fraud or if the nature and value of the property were declared by the shipper before shipment and the declaration was attached to the bill of lading. The shipper's declaration is binding on the carrier, saving his right to make proof to the contrary.

2065. No freight is payable in respect of property lost by reason of perils of the sea or the carrier's failure to make the ship seaworthy.

2066. The carrier may land, destroy or render innocuous any inflammable, explosive or dangerous property if he would not have consented to its shipment had he been aware of its nature or properties.

The shipper of such property is liable for any injury resulting from its shipment and for any expense incurred by the carrier to dispose of it or render it innocuous.

2067. Where dangerous property shipped with the knowledge and consent of the carrier becomes a danger to the ship or cargo, it may be landed, destroyed or rendered innocuous by the carrier without any liability on his part except by way of general average, if any.

2068. The contract is resolved with no claim for damages on either part if, by reason of superior force, the sailing of the ship which was to effect the carriage is prevented or so delayed that carriage can no longer be effected usefully for the shipper and without the risk of his incurring liability to the carrier.

2069. Any action against the carrier, shipper or receiver under a contract of carriage is prescribed one year after the delivery of the property or, in the case of total loss, one year after the date it should have been delivered.

§ 3.—*Handling of property*

2070. The handling contractor is in charge of all loading and discharging operations, including all necessary operations prior and subsequent to loading and discharge.

For the purposes of his activities, the handling contractor is presumed to have received the property as declared by the depositor.

2071. The handling contractor acts on behalf of the person who hired his services and is liable only to that person, who alone has an action against him.

2072. The handling contractor may be called upon to receive, tally and keep property on land until loading, on behalf of the carrier, shipper or receiver; he may likewise be called upon to receive, tally and keep property on land after its discharge as well as to deliver it.

Those additional services are due if they have been agreed or if they are consistent with the custom of the port.

2073. The handling contractor may be exonerated from liability for any loss of property for the same reasons as the carrier may; however, the plaintiff may in those cases establish that the loss is due to the fault of the handling contractor or his servants.

The liability of the handling contractor cannot exceed the amount fixed by government regulation, unless he committed fraud or has been notified of a declaration of the value of the property.

2074. Any clause for the purpose or to the effect of relieving the handling contractor from liability, shifting the burden of proof to the other party, limiting his liability to an amount lower than that fixed by regulation or assigning the benefit of insurance to him cannot be set up against the shipper or the receiver.

CHAPTER VII

CONTRACT OF EMPLOYMENT

2075. A contract of employment is a contract by which a person, the employee, undertakes to do work for remuneration, according to the instructions and under the direction or control of another person, the employer.

2076. A contract of employment is for a fixed term or an indeterminate term, but the engagement of the employee can only be for a limited period.

2077. The employer is bound not only to allow the performance of the work agreed upon and to pay the remuneration fixed, but also to take any measures consistent with the nature of the work to protect the health, safety and dignity of the employee and the integrity of his person.

2078. The employee is bound not only to carry on his work with prudence and diligence, but also to act faithfully and honestly and not to use, in any manner that may be damaging to the employer, any confidential information he may obtain in carrying on or in the course of his work.

Those obligations exist for a reasonable time after cessation of the contract.

2079. The parties may stipulate in writing and in express terms that, even after the termination of the contract, the employee shall neither compete with his employer in his own name nor participate in any capacity whatsoever in an enterprise which would then compete with him.

That stipulation must be limited, as to time, place and type of employment, to whatever is necessary for the protection of the legitimate interests of the employer as long as the earning capacity of the employee is not affected.

The burden of proof that the stipulation is valid is on the employer.

2080. A contract of employment is tacitly renewed for an indeterminate term where the employee continues to carry on his work for five days after the expiry of the term, without objection from the employer.

2081. Either party in a contract with an indeterminate term may terminate it by giving notice of termination to the other party.

The notice of termination must be of a reasonable time and take into account, in particular, the nature of the employment, the special circumstances in which it is carried on and the duration of the period of work.

2082. The employee is entitled to compensation for any injury he suffers where insufficient notice of termination is given or where the manner of resiliation is abusive; computation of the compensation shall take into account, in particular, the duration of the period of work.

The employee cannot renounce his right to compensation.

2083. A contract of employment terminates upon the death of the employee.

A contract of employment may also terminate, according to the circumstances, upon the death of the employer or the inability of either party to perform his obligations.

2084. One of the parties may, for a serious reason, unilaterally resiliate the contract of employment without prior notice.

2085. An employer cannot avail himself of a stipulation of non-competition if he has resiliated the contract without a serious reason or if he has himself given the employee such a reason for resiliating the contract.

2086. Upon termination of the contract, the employer shall furnish to the employee, at his request, a certificate of employment, showing only the nature and duration of the employment and indicating the identities of the parties.

CHAPTER VIII

CONTRACT FOR WORK OR SERVICES

SECTION I

NATURE AND SCOPE OF THE CONTRACT

2087. A contract for work or services is a contract by which a person, the contractor or the provider of services, as the case may be, undertakes to carry out physical or intellectual work for another person, the customer or to provide a service, for a price which the customer binds himself to pay.

2088. The contractor or the provider of services is free to choose the means of performing the contract and no relationship of subordination exists between the contractor or the provider of services and the customer in respect of such performance.

2089. The contractor is bound to carry out the work in accordance with usual practice and the rules of art and to warrant that the work is in conformity with the contract. He cannot be relieved from liability except by proving superior force.

The provider of services is bound to act in the best interests of his customer, with prudence and diligence; he is liable only if he commits a fault in performing the contract.

SECTION II

RIGHTS AND OBLIGATIONS OF THE PARTIES

§ 1.—*General provisions applicable to both services and works*

2090. Unless a contract has been entered into specifically in view of his personal qualities or unless the very nature of the contract prevents it, the contractor or the provider of services may employ a third person to perform the contract, but its performance remains under his supervision and responsibility.

2091. The contractor or the provider of services shall furnish the property necessary for the performance of the contract, unless the parties have stipulated that only his work is required.

The property to be furnished must be of good quality; the contractor or the provider of services is bound by the same warranties in respect of the property as a seller.

2092. Where the property is provided by the customer, the contractor or the provider of services is bound to use it with care and to account for its use; where the property is evidently unfit for its intended use or where it has a defect, the contractor or the provider of services is bound to inform the customer immediately, failing which he is liable for any injury which may result from its use.

2093. If the property necessary for the performance of the contract perishes by superior force, the party that furnished it bears the loss.

2094. The price of the work or services shall be fixed by the contract, by usage or by law or on the basis of the value of the work carried out or the services rendered.

2095. Where the price of the work or services is estimated at the time the contract is entered into, the contractor or the provider of the services shall give the reasons for any increase of the price.

The customer is bound to pay such increase only to the extent that it results from work, services or expenses that the contractor or the provider of services could not foresee at the time the contract was entered into.

2096. Where the price is fixed according to the value of the work performed, the services rendered or the property furnished, the

contractor or the provider of services is bound, at the request of the customer, to give him an account of the progress of the work or of the services rendered so far and of the expenses incurred so far.

2097. Where the price is fixed by the contract, the customer shall pay the price agreed, and cannot claim a reduction of the price on the ground that the work or service required less effort or cost less than had been foreseen.

Similarly, the contractor or the provider of services cannot claim an increase of the price for the opposite reason.

Unless otherwise agreed by the parties, the price fixed by the contract remains unchanged notwithstanding any modification of the original terms and conditions of performance.

§ 2.—*Special provisions respecting work*

I — General provisions

2098. The customer is bound to accept the work when it is substantially completed and ready to be used for its intended purpose.

Acceptance of the work is the act by which the customer declares that he accepts it, with or without reservation.

2099. The customer is not bound to pay the price before the work is accepted.

At the time of payment, the customer may deduct from the price, until the repairs or corrections are made to the work, a sufficient amount to meet the reservations which he made as to the apparent defects that existed when he accepted the work. He shall deposit the deducted amount in trust.

The customer cannot exercise this right if the contractor furnishes him with sufficient security to guarantee the performance of his obligations.

2100. If the parties do not agree on the amount to be deducted and on the work to be completed, an assessment shall be made by an expert designated by the parties or, failing that, by the court.

2101. A customer who accepts without reservation retains his right to pursue his remedies against the contractor in cases of nonapparent defects.

2102. Where the work is performed in successive phases, it may be accepted in parts; the price for each part is payable upon delivery and acceptance of the part; payment creates a presumption that the part has been accepted, unless the sums paid must be considered merely as partial payments on the price.

2103. The contractor is liable for loss of the work occurring before its delivery, unless it is due to the fault of the customer or the customer is in default.

Where the property is furnished by the customer, the contractor is not liable for the loss of the work unless it is due to his fault. He cannot claim the price of his work except where the loss of the work results from an inherent defect in the property furnished or is due to the fault of the customer.

2104. The prescription of rights to pursue remedies between the parties begins to run only from the acceptance without reservation of the work or from the time the work subject to reservations is performed.

II — Complex Movable or Immovable Works

2105. At any time during the construction or renovation of an immovable or the manufacture or production of a complex movable property, the customer, provided he does not interfere with the work, may examine the progress of the work, the quality of the materials used and of the work performed, and the statement of expenses incurred so far.

2106. Unless they can be relieved from liability, the contractor, the architect and the engineer who directed or supervised the work are solidarily liable for the loss of the work occurring within five years after acceptance, where the loss results from faulty design, construction or manufacture of the work, or the unfavourable nature of the ground.

2107. The architect or the engineer may be relieved from liability only by proving that the defects or the poor workmanship in the work or in part of it completed do not result from any erroneous or faulty expert opinion or plan he may have submitted or from any failure to direct or supervise the work.

The contractor may be relieved from liability only by proving that the defects or poor workmanship result from an erroneous or faulty expert opinion or plan of the architect or engineer selected by the customer.

They may, in addition, be relieved from liability by proving that the defects or poor workmanship result from decisions imposed by the customer in selecting the land or materials, or the subcontractors, experts, or construction methods.

2108. The contractor, the architect and the engineer are also bound, notwithstanding any liability, to warrant the work for one year against poor workmanship existing at the time of acceptance or discovered within one year after acceptance.

2109. During the performance of the work, the contractor may, if so provided in the agreement, require partial payments on the price of the contract for the value of the work performed and of the materials forming part of the work; before doing so, he is bound to furnish the customer with a statement of the amounts paid to the subcontractors, to the persons having supplied the materials and to any other person having participated in the work, and of the amounts he still owes them for the completion of the work.

2110. At the time of payment, the customer may deduct from the price of the contract an amount sufficient to pay the claims of the subcontractors, suppliers of materials and other persons who may exercise a legal hypothec on the immovable work and who have given him notice of their contract with the contractor in respect of the work performed or the materials or services supplied after such notice was given.

The deduction is valid until such time as the contractor gives the customer an acquittance.

The customer cannot exercise the right set out in the first paragraph if the contractor furnishes him with sufficient security to guarantee the claims.

2111. For the purposes of this chapter, an immovable promoter who sells the work which he has built or caused to be built, even after its completion, is deemed to be a contractor.

SECTION III

RESILIATION OF THE CONTRACT

2112. The customer may unilaterally resiliate the contract even though the work or provision of service is already in progress.

2113. The contractor or the provider of services cannot resiliate the contract unilaterally except for a serious reason, and

never at an inopportune moment; otherwise, he is liable to reparation for any injury caused to the customer as a result of the resiliation.

Where the contractor or the provider of services resiliates the contract, he is bound to do all that is immediately necessary to prevent any loss.

2114. The death of the customer does not terminate the contract unless its performance thereby becomes impossible or useless.

2115. The contract is not terminated by the death or disability of the contractor or the provider of services unless it has been entered into specifically in view of his personal qualifications or cannot be adequately continued by his successor in his professional activities, in which case the customer may resiliate it.

2116. Upon resiliation of the contract, the customer is bound to pay to the contractor or the provider of services, in proportion to the agreed price, the actual costs and expenses, the value of the work performed before the end of the contract or before the notice of resiliation and, as the case may be, the value of the property furnished, where it can be returned to him and used by him.

For his part, the contractor or the provider of services is bound to repay any advances he has received in excess of what he has earned.

In either case, each party is liable to reparation for any other injury that the other party may have suffered.

CHAPTER IX

MANDATE

SECTION I

NATURE AND SCOPE OF MANDATE

2117. Mandate is a contract by which a person, the mandator, empowers another person, the mandatary, to represent him in the performance of a juridical act with a third person, and the mandatary, by his acceptance, binds himself to exercise the power.

The power and, where applicable, the writing evidencing it are called the power of attorney.

2118. The object of the mandate may also be the performance of acts intended to ensure the personal protection of the mandator, the administration, in whole or in part, of his patrimony as well as his moral and physical well-being, should he become unable to take care of himself or to administer his property.

2119. Acceptance of a mandate may be express or tacit. Tacit acceptance may be inferred from the acts and even from the silence of the mandatary.

2120. Mandate is either by gratuitous title or by onerous title. A mandate entered into between two natural persons is presumed to be by gratuitous title but a professional mandate is presumed to be given by onerous title.

2121. Remuneration, if any, is determined by the contract, usage or law or on the basis of the value of the services rendered.

2122. A mandate may be special, namely for a particular business or general, namely for all the business of the mandator.

A mandate expressed in general terms confers the power to perform acts of simple administration only. In order to confer the power to perform other acts, it must be express, unless it entrusts full administration in the case of a mandate given for the eventuality of the mandator's inability.

2123. The powers of a mandatary extend not only to what is expressed in the power of attorney, but also to anything that may be inferred therefrom. The mandatary may do all acts which are incidental to such powers and which are necessary for the performance of the mandate.

2124. Powers granted to persons of a certain profession or calling to perform an act which is not unfamiliar to them in their profession or calling need not be mentioned expressly; they are inferred from the nature of such profession or calling.

SECTION II

OBLIGATIONS BETWEEN PARTIES

§ 1.—*Obligations of mandatary towards mandator*

2125. A mandatary is bound to fulfill the mandate he has accepted, and he must act with prudence and diligence in performing it.

He shall act honestly and faithfully in the best interests of the mandator, and avoid placing himself in a position that puts his own interest in conflict with that of his mandator.

2126. During the mandate, the mandatary is bound to inform the mandator, at his request or where circumstances warrant it, of the stage reached in the performance of the mandate.

The mandatary shall inform the mandator without delay that he has fulfilled his mandate.

2127. The mandatary is bound to fulfill the mandate in person unless he is authorized by the mandator to appoint another person to perform all or part of it in his place.

If the interests of the mandator so require, however, the mandatary shall appoint a third person to replace him where unforeseen circumstances prevent him from fulfilling the mandate and he is unable to inform the mandator thereof in due time.

2128. The mandatary is accountable for the acts of the person he has appointed without authorization as his substitute as if he had performed them in person; where he was authorized to make such an appointment, he is accountable only for the care with which he selected his substitute and gave him instructions.

In any case, the mandator has a direct action against the person appointed by the mandatary as his substitute.

2129. In the performance of the mandate, the mandatary, unless prohibited by the mandator or usage, may require the assistance of another person and delegate powers to him for that purpose.

The mandatary remains liable towards the mandator for the acts of the person assisting him.

2130. A mandatary who agrees to represent, in the same act, persons whose interests conflict or could conflict must so inform each of the mandators, unless he is exempted by usage or the fact that each of the mandators is aware of the double mandate; he shall act impartially towards each of them.

Where a mandator was not in a position to know of the double mandate, he may have the act of the mandatary declared null if he suffers injury as a result.

2131. Where several mandataries are appointed in respect of the same business, the mandate has effect only if it is accepted by all of them.

The mandataries shall act jointly for all acts contemplated in the mandate, unless otherwise stipulated or implied by the mandate. They are solidarily liable for the performance of their obligations.

2132. A mandatary who exercises alone powers that his mandate requires him to exercise with another person is deemed to exceed his powers, unless he exercises them more advantageously for the mandator than agreed.

2133. The mandatary cannot use for his benefit any information he obtains or any property he is charged with receiving or administering in carrying out his mandate, unless the mandator consents to such use or such use arises from the law or the mandate.

If the mandatary uses the property or information without authorization, he shall compensate the mandator by paying, in the case of information, an amount equal to the enrichment he obtains or, in the case of property, an appropriate rent or the interest on the sums used.

2134. The mandatary cannot, even through an intermediary, become a party to an act which he has agreed to perform for his mandator, unless the mandator authorizes it or is aware of his quality as a contracting party.

Only the mandator may avail himself of the nullity resulting from the violation of this rule.

2135. Where the mandate is by gratuitous title, the court may, after assessing the extent of the mandatary's liability, reduce the amount of damages for which he is liable.

§ 2.—*Obligations of mandator towards mandatary*

2136. The mandator is bound to cooperate with the mandatary to favour the fulfilment of the mandate.

2137. Where required, the mandator shall advance to the mandatary the necessary sums for the performance of the mandate. He shall reimburse the mandatary for any reasonable expenses he has incurred and pay him the remuneration to which he is entitled.

2138. The mandator owes interest on expenses incurred by the mandatary in the performance of his mandate from the day they are disbursed.

2139. The mandator is bound to discharge the mandatary from the obligations he has contracted towards third persons within the limits of the mandate.

The mandator is not liable to the mandatary for any act which exceeds the limits of the mandate. He is fully liable, however, if he ratifies such act.

2140. The mandator is deemed to have ratified an act which exceeds the limits of the mandate where the act has been performed more advantageously for him than he had indicated.

2141. All acts performed by a mandatary who is unaware that the mandate has terminated are valid and have the same effects as if they had been ratified.

2142. Where the mandatary is not at fault, the mandator is liable to compensate him for any injury he has suffered by reason of the performance of the mandate.

2143. If no fault is imputable to the mandatary, the sums owed to him must be paid even though the business has not been successfully concluded.

2144. If a mandate is given by several persons, their obligations towards the mandatary are solidary.

SECTION III

OBLIGATIONS OF PARTIES TOWARDS THIRDS PERSONS

§ 1.—*Obligations of mandatary towards third persons*

2145. Where a mandatary binds himself, within the limits of his mandate, in the name and on behalf of the mandator, he is not personally liable to the third person with whom he contracts.

The mandatary is liable to the third person if he binds himself in his own name, subject to any rights the third person may have against the mandator.

2146. Where a mandatary exceeds his powers, he is personally liable to the third person with whom he contracts, unless the third person was sufficiently aware of the mandate, or unless the mandator has ratified the acts performed by the mandatary.

2147. Where the mandatary agrees with a third person to disclose the identity of his mandator within a fixed period and fails to do so, he is personally bound.

The mandatary is also personally bound if he is bound to conceal the name of the mandator or if the person whose identity he discloses is insolvent, is a minor or is under protective supervision.

§ 2.—*Obligations of mandator towards third persons*

2148. A mandator is liable to third persons for the acts performed by the mandatary in the performance and within the limits of his mandate unless, under the agreement or by virtue of usage, the mandatary alone is liable.

The mandator is also liable for any acts which exceed the limits of the mandate, if he has ratified them.

2149. The mandator may repudiate the acts of the person appointed by the mandatary as his substitute if he suffers any injury thereby, where the appointment was made without his authorization or where his interest or the circumstances did not warrant the appointment.

2150. The mandator or, upon his death, his heirs are liable to third persons for acts done by the mandatary in the performance and within the limits of the mandate after the termination of the mandate, where the acts were the necessary consequence of those already

performed or could not be deferred without risk of loss, or where the third person was unaware of the termination of the mandate.

2151. A person who has given cause to believe that a person was his mandatary is liable, as if he were his mandatary, to the third person who has contracted in good faith with the latter, unless he has taken appropriate measures to prevent the error.

2152. A mandator is responsible for any injury caused by the fault of the mandatary in the performance of his mandate unless he proves, where the mandatary was not his servant, that he could not have prevented the injury.

2153. A mandator, after disclosing to a third person the mandate he had given, may take action directly against the third person for the performance of the obligations he contracted towards the mandatary, who was acting in his own name. However, the third person may plead the inconsistency of the mandate with the stipulations or nature of his contract and the defenses which can be set up against the mandator and the mandatary, respectively.

If proceedings have already been instituted against the third person by the mandatary, the mandator may exercise his right only by intervening in the proceedings.

SECTION IV

SPECIAL RULES GOVERNING MANDATE GIVEN FOR EVENTUALITY OF INABILITY

2154. A mandate given by a person of full age for the eventuality of his inability to take care of himself or to administer his property shall be made by a notarial deed *en minute* or in the presence of witnesses.

The performance of the mandate is subordinate to the occurrence of the inability and to homologation by the court, at the request of the mandatary designated in the deed.

2155. A mandate given in the presence of witnesses must be written by the mandator or by a third person.

The mandator, in the presence of two witnesses who have no interest in the deed and who are in a position to ascertain his ability to act, shall declare the nature of the deed but need not disclose its contents. The mandator shall sign the deed at the end or, if he already signed it, recognize his signature; he may also have a third person sign the writing for him in his presence and according to his instructions.

The witnesses shall sign the mandate forthwith in the presence of the mandator.

2156. Where the scope of the mandate is in doubt, the mandatary shall interpret it according to the rules respecting tutorship to persons of full age.

If any notice, consent or authorization is then required pursuant to the rules respecting the administration of the property of others, the mandatary may obtain it from the Public Curator or from the court.

2157. Where the mandate is not such as to fully ensure the care of the person or the administration of his property, protective supervision may be instituted to complete it; the mandatary shall then proceed to carry out the mandate and make a report, on application and at least once each year, to the tutor or curator. At the end of the mandate, he shall render an account to the tutor or curator.

The mandatary is bound by such obligations only with respect to the tutor or curator to the person. If the protection of the person is assumed by the mandatary himself, the tutor or curator to property is bound by the same obligations towards the mandatary.

2158. Acts performed before the homologation of the mandate may be annulled or the resulting obligations may be reduced, on sole proof that the mandator's inability was notorious or known to the co-contractor at the time that acts were executed.

2159. Unless otherwise stipulated in the mandate, the mandatary is authorized to perform, to his benefit, the obligations of the mandator provided in articles 2137 to 2139 and 2142.

2160. A mandator may revoke his mandate after the court ascertains that he has again become able to take care of himself or to administer his property.

2161. If the director general of the health and social services establishment which provides care or services to the mandator ascertains that the mandator has again become able to take care of himself or to take care of his property, he shall attest to such ability in a report filed in the office of the court. The report shall include the medical and psychosocial assessment.

The clerk shall inform the mandatary, the mandator and the persons qualified to intervene in an application for the institution of

protective supervision that the report has been filed. If no objection is made within thirty days, the mandate is revoked of right. An attestation of the revocation shall be drawn up by the clerk and transmitted without delay to the mandator, the mandatary and the Public Curator.

2162. The mandatary shall not, notwithstanding any provision to the contrary, renounce his mandate unless he has previously provided for his replacement if the mandate provides therefor or has applied for the institution of protective supervision in respect of the mandator.

SECTION V

TERMINATION OF MANDATE

2163. In addition to the causes of extinguishment common to obligations, revocation of the mandate by the mandator, renunciation by the mandatary or the extinguishment of the authority conferred on the mandatary terminates the mandate.

The mandate is also terminated upon the death or bankruptcy of either party or upon his being placed under protective supervision.

2164. The mandator may revoke the mandate and compel the mandatary to return to him the power of attorney in order to make a notation therein of the termination of the mandate. The mandatary has a right to require the mandator to furnish him with a duplicate of the power of attorney containing such notation.

Where the power of attorney is made by notarial deed *en minute*, the mandator shall make the notation on a copy and may give notice of termination of the mandate to the depositary of the document, who, on being notified, is bound to note it on the document and on every copy of it which he issues.

2165. Where the mandator is incapable, any interested person, including the Public Curator, may, if the mandate is not faithfully performed or for any other serious reason, apply to the court for the revocation of the mandate, the rendering of account of the mandatary and the institution of protective supervision in respect of the mandator.

2166. A mandatary may renounce the mandate he has accepted by so notifying the mandator. He is thereupon entitled, if the mandate was given by onerous title, to the remuneration he has earned until the day of his renunciation.

The mandatary is liable to reparation for injury caused to the mandator by his renunciation, if he submits it without a serious reason and at an inopportune moment.

2167. The mandator may, for a determinate term or to ensure the performance of a special obligation, renounce his right to revoke the mandate unilaterally.

The mandatary may, in the same manner, undertake not to exercise his right of renunciation.

2168. The appointment of a new mandatary by the mandator for the same business is equivalent to revocation of the first mandatary from the day the first mandatary was notified of the new appointment.

2169. A mandator who revokes a mandate remains bound to perform his obligations towards the mandatary; he is also liable to reparation for any injury caused to the mandatary as a result of a revocation made without a serious reason and at an inopportune moment.

Where notice of the revocation has been given only to the mandatary, the revocation cannot affect a third person who deals with him while unaware of the revocation, without prejudice, however, to the remedy of the mandator against the mandatary.

2170. Upon termination of the mandate, the mandatary is bound to do everything which is a necessary consequence of his acts or which cannot be deferred without risk of loss.

2171. Upon the death of the mandatary or his being placed under protective supervision, the liquidator, tutor or curator, if aware of the mandate and able to act, is bound to notify the mandator of the death and, in respect of any business already begun, to do everything which cannot be deferred without risk of loss.

In the case of a mandate given for the eventuality of the mandator's inability, the liquidator of the mandatary is bound, in the same circumstances, to give notice of the mandatary's death to the Public Curator.

2172. Upon termination of the mandate, the mandatary is bound to render an account and return to the mandator everything he has received in the performance of his duties, even if what he has received was not due to the mandator.

The mandatary owes interest, computed from the time he is put in default, on any balance in the account consisting of sums he has received.

2173. A mandatary is entitled to deduct what the mandator owes him by reason of the mandate from the sums he is required to remit.

The mandatary may also retain what was entrusted to him by the mandator for the performance of the mandate until payment of the sums due to him.

CHAPTER X

CONTRACT OF PARTNERSHIP AND OF ASSOCIATION

SECTION I

GENERAL PROVISIONS

2174. A contract of partnership is a contract by which the parties, in a spirit of cooperation, agree to carry on an activity or an enterprise, to contribute thereto by combining property, knowledge or activities and to share any resulting profits.

A contract of association is a contract by which the parties agree to pursue a common goal other than the making of profits to be shared between the members of the association.

2175. The partnership or association is created upon the formation of the contract if no other date is indicated in the contract.

2176. Partnerships are either general partnerships, limited partnerships or joint ventures.

Partnerships may also be joint-stock companies, in which case they are legal persons.

2177. A general or limited partnership is formed under a name that is common to the partners.

It is bound to make the declarations required by the Act respecting declarations of partnerships and sole proprietorships; failing that, it is deemed to be a joint venture, subject to the rights of third persons in good faith.

2178. The declaration of partnership must set forth the object of the partnership, in addition to the information required under the Act respecting declarations of partnerships and sole proprietorships, and set forth that no person other than the persons mentioned therein is a member of the partnership.

The declaration of a limited partnership must also indicate the name and domicile of each of the partners, distinguishing which are general partners and which are special partners, and specify the nature and value of the contribution of each partner to the partnership, the date of the payments where the contribution is in cash and paid by instalments, and the nature and value of any contribution a special partner undertakes to make subsequently, with the date and the terms and conditions of payment of this contribution.

2179. Where the declaration of partnership is incomplete, inaccurate or irregular, it may be rectified by a regularizing document.

2180. A regularizing document that may infringe upon the rights of the partners or of third persons has no effect in their regard unless they consented to it or unless the court, after hearing the interested persons and, if necessary, amending the proposed document, has ordered that it be filed.

2181. The regularizing document is deemed to be part of the declaration and to have taken effect simultaneously with it unless a later date is provided in the regularizing document or in the judgment.

2182. Any change to the content of the declaration of partnership must be set forth in an amending declaration.

2183. The declaration of partnership and the amending declaration can be set up against third persons from the time they are made; they are proof of their content, in favour of third persons in good faith, until an amending declaration is made or the declaration of partnership is cancelled.

Third persons may submit any proof to refute the statements contained in a declaration.

2184. If the declaration of partnership contains false information or if, although a change has been made in the partnership, no amending declaration has been made, the partners are liable towards third persons for the resulting obligations of the partnership, unless they prove that they did not know that the information was false or that the change had not been declared.

2185. A general or limited partnership shall, in carrying on business, indicate its juridical form in its name or after its name.

Failing such indication in an act performed by the partnership, the court, in ruling on the action of a third person in good faith, may decide that the partnership and its partners are liable, in respect of that act, in the same manner as a joint venture and its partners.

SECTION II

GENERAL PARTNERSHIPS

§ 1.—*Relations of partners between themselves and with partnership*

2186. A partner is a debtor to the partnership for everything he promises to contribute to it.

Where a person undertakes to contribute a sum of money and fails to do so, he is liable for interest from the day his contribution ought to have been made, subject to any additional damages which may be claimed from him.

2187. A contribution of property is made by transferring rights of ownership or of enjoyment and by placing the property at the disposal of the partnership.

In his relations with the partnership, the person who contributes property is warrantor therefor in the same manner as a seller towards a buyer where his contribution consists in the ownership of property; he is warrantor therefor in the same manner as a lessor towards a lessee, where his contribution consists in the enjoyment of property.

A contribution consisting in the enjoyment of property that would normally be required to be renewed during the term of the partnership transfers ownership of the property to the partnership, which becomes liable to return property of the same quantity, quality and value.

2188. A contribution consisting in knowledge or activities shall be continuous so long as the partner who undertook to make such a contribution is a member of the partnership; the partner is liable to the partnership for any profit he realizes from the contribution.

2189. Participation in the profits of a partnership entails the obligation to share in the losses.

2190. The share of each partner in the assets, profits and losses is equal if it is not fixed in the contract.

If the contract fixes the share of each partner in only the assets, profits or losses, it is deemed to fix the share for all three cases.

2191. Any stipulation whereby a partner is excluded from participation in the profits is without effect.

Any stipulation whereby a partner is exempt from the obligation to share in the losses cannot be set up against third persons.

2192. A partner cannot compete with the partnership on his own account or on behalf of a third person or take part in an activity which deprives the partnership of the property, knowledge or activity he is bound to contribute to it; any profits arising from such competition belong to the partnership, without prejudice to any remedy it may pursue.

2193. A partner is entitled to recover the amount of the outlays he has made on behalf of the partnership and to be indemnified for the obligations he has contracted or the losses he has suffered in acting for the partnership if he was in good faith.

2194. Where one of the partners is, for his own account, the creditor of a person who is also indebted to the partnership, and the debts are exigible to the same degree, the amounts he receives from the debtor shall be allocated to both claims in proportion to the amount of each.

2195. Each partner may use the property of the partnership, provided he uses it in the interest of the partnership and according to its destination, and in such a way as not to prevent the other partners from using it as they are entitled.

Each partner may also bind the partnership in the course of its activities, but the partners may oppose the transaction before it is concluded or restrict the right of a partner to bind the partnership.

2196. A partner may associate a third person with himself in his share in the partnership without the consent of the other partners, but he cannot make him a member of the partnership without their consent.

Within sixty days after becoming aware that a person who is not a member of the partnership has acquired the share of a partner by

onerous title, any partner may exclude the person from the partnership by reimbursing him for the price of the share and the expenses he has paid. This right lapses one year from the acquisition of the share.

2197. Where a partner transfers his share in the partnership to a partner or to the partnership or where the partnership redeems it, the value of the share, if the parties fail to agree on it, shall be determined by an expert designated by the parties or, failing that, by the court.

2198. The share of a partner in the assets or profits of the partnership may be charged with a hypothec.

2199. Every partner is entitled to participate in the collective decisions, and he cannot be prevented from exercising that right by the contract of partnership.

Unless otherwise stipulated in the contract, the decisions are taken by the vote of a majority of the partners, regardless of the value of their interests in the partnership. However, decisions to amend the contract of partnership must be unanimous.

2200. The partners may enter into such agreements between themselves as they consider appropriate with regard to their respective powers in the management of the affairs of the partnership and they may agree on the establishment of a board of directors.

2201. The partners may appoint one or more copartners or even a third person to manage the affairs of the partnership.

The manager, notwithstanding the opposition of the partners, may perform any act within his powers, provided he does not act fraudulently. The powers of management cannot be revoked without a serious reason during the existence of the partnership, except where they were conferred by an act subsequent to the contract of partnership, in which case they may be revoked in the same manner as a simple mandate.

2202. Where several persons are entrusted with the management and there is no stipulation dividing it between them nor any stipulation preventing one from acting without the others, each of them may act separately; where there is such a stipulation, however, none of them may act without the others, even where it is impossible for the others to join in the act.

2203. Failing any stipulation respecting the mode of management, the partners are deemed to have conferred the power to manage the affairs of the partnership on one another.

Any act performed by a partner in respect of the common activities binds the other partners, without prejudice to their right to object, jointly or separately, to the act before it is performed.

In addition, each partner may compel the other partners to incur any expenses necessary for the preservation of the common property but one partner cannot change the condition of that property without the consent of the others, regardless of how advantageous such changes may be.

2204. A partner without powers of management cannot alienate or otherwise dispose of common property, subject to the rights of third persons in good faith.

2205. Notwithstanding any stipulation to the contrary, any partner may personally inform himself of the affairs of the partnership and consult its books and records even if he is excluded from management.

In exercising this right, the partner is bound neither to impede the operations of the partnership unduly nor to prevent the other partners from exercising the same right.

§ 2.—*Relations of partnership and partners with third persons*

2206. Each partner is a mandatary of the partnership in respect of third persons in good faith and binds the partnership for every act performed in its name in the ordinary course of its business.

No stipulation to the contrary may be set up against third persons in good faith.

2207. An obligation contracted by a partner in his own name binds the partnership when it comes within the scope of the business of the partnership or when its object is property used by the partnership.

A third person, however, may cumulate the defences which may be set up against the partner and the partnership and claim that he would not have entered into the contract if he had known that the partner was acting on behalf of the partnership.

2208. In respect of third persons, the partners are jointly liable for the obligations contracted by the partnership but they are solidarily liable if the obligations have been contracted for the service or operation of an undertaking of the partnership.

Before instituting proceedings for payment against a partner, the creditors must first discuss the property of the partnership.

2209. A person who gives reason to believe that he is a partner, although he is not, may be held liable as a partner towards third persons in good faith acting in that belief.

The partnership is not liable towards third persons, however, unless it gave reason to believe that such person was a partner or it failed to take measures to prevent third persons from being mistaken in circumstances that made such a mistake predictable.

2210. Dormant partners are liable towards third persons for the same obligations as declared partners.

2211. A partnership cannot make a distribution of securities to the public or issue negotiable instruments, on pain of nullity of the contracts entered into or of the securities or instruments issued and of the obligation to reparation for any injury it causes to third persons in good faith.

In such a case, the partners are solidarily liable for the obligations of the partnership.

2212. A partnership may itself be a partner in another partnership.

2213. A partnership may sue and be sued in a civil action under the name it declares.

§ 3.—*Loss of quality of partner*

2214. A partner ceases to be a member of the partnership by the transfer or redemption of his share or upon his death, upon being placed under protective supervision or becoming bankrupt, or by the exercise of his right of withdrawal; he also ceases to be a member where such is his will, subject to the agreement of all the other partners, by his expulsion or by a judgment authorizing his withdrawal or ordering the seizure of his share.

2215. A partner who ceases to be a member of the partnership otherwise than by the transfer or seizure of his share may obtain the

value of his share upon ceasing to be a partner, and the other partners are bound to pay him the amount of the value as soon as it is established, with interest from the day on which his membership ceased.

Failing stipulations in the contract of partnership or failing agreement among the interested persons as to the value of the share, the value shall be determined by an expert designated by the interested persons or, failing that, by the court. The expert or the court may, however, defer the assessment of contingent assets or liabilities.

2216. A partner of a partnership constituted for a term that is not fixed may withdraw from the partnership by giving it notice of his withdrawal, in good faith and not at an inopportune moment.

The same rule applies to a partner of a partnership whose contract of partnership reserves the right of withdrawal.

2217. The partners may, by a majority vote, agree on the expulsion of a partner who fails to perform his obligations or hinders the carrying on of the activities of the partnership.

A partner may, in similar circumstances, apply to the court for authorization to withdraw from the partnership; such an application shall be granted unless the court considers it more appropriate to order the expulsion of the partner at fault.

§ 4.—*Dissolution and liquidation of partnership*

2218. A partnership is dissolved by the causes of dissolution provided in the contract, by the accomplishment of its object or the impossibility of accomplishing it, by bankruptcy, or by consent of all the partners. It may also be dissolved by the court for a legitimate cause.

The partnership shall then be liquidated.

2219. Any partnership constituted for an agreed term may be continued by consent of all the partners.

2220. The uniting of all the shares in the hands of a single partner does not entail dissolution of the partnership, provided at least one other partner joins the partnership within one hundred and twenty days.

2221. The powers of the partners to act on behalf of the partnership cease upon the dissolution of the partnership, except in respect of acts which are a necessary consequence of business already begun.

Notwithstanding the foregoing, anything done in the ordinary course of business of the partnership by a partner unaware of the dissolution of the partnership and acting in good faith binds the partnership and the other partners as if the partnership were still in existence.

2222. Dissolution of the partnership does not affect the rights of third persons in good faith who subsequently enter into a contract with a partner or a mandatary acting on behalf of the partnership.

2223. Liquidation of the partnership is subject to the rules provided in articles 357 to 363 of the Book on Persons, adapted as required. The notices required by those rules must be filed in accordance with the Act respecting declarations of partnerships and sole proprietorships.

SECTION III

LIMITED PARTNERSHIPS

2224. A limited partnership is a partnership consisting of one or more general partners who are the sole persons authorized to administer and bind the partnership, and of one or more special partners who are bound to furnish a contribution to the common stock of the partnership.

2225. A limited partnership may make a distribution of securities to the public to establish or increase the common stock, and issue negotiable instruments.

A third person who undertakes to make a contribution becomes a special partner of the partnership.

2226. General partners have the powers, rights and obligations of the partners of a general partnership but they are bound to render an account of their administration to the special partners.

The general partners are bound by the same obligations towards the special partners as those binding an administrator charged with full administration of the property of others towards the beneficiary of the administration.

Clauses restricting the powers of the general partners cannot be set up against third persons in good faith.

2227. General partners shall keep a register at the place of the principal establishment of the partnership, containing the names and addresses of the special partners and any information concerning their contributions to the common stock.

2228. The contribution of a special partner, where it consists of a sum of money or of any other property, shall be furnished at the time of establishment of the common stock or at any other time as an additional contribution to the common stock.

The special partner assumes the risk of loss of the agreed contribution by superior force until it is delivered.

2229. While the partnership exists, no special partner may withdraw part of his contribution in property to the common stock, in any way, unless he obtains the consent of a majority of the other partners and the property remaining after the withdrawal is sufficient to discharge the debts of the partnership.

2230. A special partner is entitled to receive his share of the profits, but if the payment of the profits reduces the common stock, every special partner who receives such a payment is bound to restore the amount necessary to cover his share of the deficit, with interest.

In the case of a partnership whose capital includes property that is consumed by exploitation by the partnership, the special partner may receive his share of the profits only if the property remaining after the payment is sufficient to discharge the debts of the partnership.

2231. The share of a special partner in the common stock of the partnership is transferable.

In respect of third persons, the transferor remains liable for the obligations which may result from his share in the partnership while he was still a special partner.

2232. A special partner cannot give other than an advisory opinion with regard to the management of the partnership.

A special partner cannot negotiate any business on behalf of the partnership or act as mandatary or agent for the partnership or allow his name to be used in any act of the partnership; otherwise, he is liable in the same manner as a general partner for the obligations of

the partnership resulting from such acts and, according to the importance or number of such acts, he may be liable in the same manner as a general partner for all the obligations of the partnership.

2233. Where the general partners can no longer act, the special partners may perform any act of simple administration required for the management of the partnership.

If a general partner is not replaced within one hundred and twenty days, the partnership is dissolved.

2234. Where the property of the partnership is insufficient, the general partners are solidarily liable for the debts of the partnership in respect of third persons; a special partner is liable for the debts up to the agreed amount of his contribution, notwithstanding any transfer of his share in the common stock.

Any stipulation whereby a special partner is bound to secure or assume the debts of the partnership beyond the agreed amount of his contribution is without effect.

2235. A special partner whose name appears in the firm name of the partnership is liable for the obligations of the partnership in the same manner as a general partner, unless his quality of special partner is clearly indicated.

2236. In the case of the insolvency or bankruptcy of the partnership, a special partner cannot, in that quality, claim as a creditor until the other creditors of the partnership are satisfied.

2237. In all other respects, the rules governing general partnerships, adapted as required, apply to limited partnerships.

SECTION IV

JOINT VENTURES

§ 1.—*Establishment of joint venture*

2238. The contract by which a joint venture is established must be written or verbal. It may also arise from an overt act indicating the intention to form a joint venture.

Indivision of property existing between several persons does not by itself create a presumption of their intention to form a joint venture.

§ 2.—*Relations of partners between themselves*

2239. The partners shall agree upon the object, operation, management and any other terms and conditions of the joint venture.

Failing any special agreement, the relations of the partners between themselves are subject to the provisions governing the relations of general partners between themselves and with the partnership, adapted as required.

§ 3.—*Relations of partners with third persons*

2240. In respect of third persons, each partner retains the ownership of the property constituting his contribution to the joint venture.

Property that was undivided before the combination of the contributions of the partners or that is undivided by agreement of the partners, or any property acquired by the use of undivided sums during the term of the contract of partnership is undivided property in respect of the partners.

2241. Each partner contracts in his own name and is alone liable towards third persons.

Where, however, to the knowledge of third persons, the partners act in the quality of partners, each partner is liable towards the third persons for the obligations resulting from acts performed in that quality by any of the other partners.

2242. The partners are not solidarily liable for debts contracted in carrying on their business unless the debts have been contracted for the use or operation of a common undertaking; they are liable towards the creditor, each for an equal share, even if their shares in the joint venture are unequal.

2243. No stipulation limiting the extent of the partners' obligation towards third persons may be set up against the third persons.

2244. The partners may exercise all the rights arising from contracts entered into by another partner, but the third person is bound only towards the partner with whom he entered into the contract, unless the partner declared his quality.

2245. Any action brought against the partners may be brought against one of them as a partner of other persons, without naming the other persons.

Where judgment is rendered against a partner sued alone, all the other partners may be sued jointly or separately on the same cause of action. Where the action is founded on an obligation evidenced in a writing naming all the partners bound thereby, all of them must be parties to the action in order for judgment to be set up against them.

§ 4.—*Termination of contract of joint venture*

2246. A contract of joint venture is terminated by consent of all the partners or by the expiry of its term or the fulfilment of the condition attached to the contract, by the accomplishment of the object of the contract or by the impossibility of accomplishing the object.

It is also terminated by the death or bankruptcy of one of the partners, by his being placed under protective supervision or by a judgment ordering the seizure of his share.

2247. It may be stipulated that in the case of death of one of the partners the joint venture will continue with his legal representatives or among the surviving partners. In the latter case, the representatives of the deceased partner are entitled to the partition of the property of the joint venture only as it existed at the time of death of the partner. They cannot claim benefits arising from subsequent transactions unless they are a necessary consequence of transactions carried out before the death.

2248. Where a contract of joint venture is made for a term that is not fixed or where it reserves a right of withdrawal, it may be terminated at any time by mere notice from one of the partners to the other partners, provided it is given in good faith and not at an inopportune moment.

2249. A contract of joint venture may be resiliated for a legitimate cause, in particular where one of the partners fails to perform his obligations or hinders the carrying on of the business of the partners.

2250. The powers of the partners to act under the contract of joint venture cease upon the termination of the contract, except as regards acts which are a necessary consequence of business transactions already begun.

Anything done, however, in the course of activities of the joint venture by a partner who is unaware of the termination of the contract and is acting in good faith binds all the partners as if the joint venture continued to exist.

2251. The termination of a contract of joint venture does not affect the rights of third persons in good faith who subsequently contract with a partner or any other mandatary of all the partners.

2252. Failing agreement as to the mode of liquidation of the joint venture or the selection of a liquidator, any interested person may apply to the court for the appointment of a liquidator.

2253. A partner is entitled to restitution of the property corresponding to the share he owns, and to demand the apportionment of the undivided property he owns in the joint venture, in kind or in equivalence, upon termination of the contract.

Failing agreement as to the value of the share, the liquidator or, failing him, the court shall determine it. The liquidator or the court may, however, defer assessment of contingent assets or liabilities.

2254. The liquidator is seized of the common property and acts as an administrator of the property of others entrusted with full administration.

The liquidator shall first pay the debts, then reimburse the contributions and, finally, partition the assets among the partners.

SECTION V

ASSOCIATIONS

2255. The contract by which an association is established must be written or verbal. It may also arise from overt acts indicating the intention to form an association.

2256. The contract of association governs the object, functioning, management and other terms and conditions of the association.

It is presumed to allow the admission of members other than the founding members.

2257. The directors of the association shall be elected from among its members.

Failing any special rules in the contract of association, the founding members are, of right, the directors of the association until they are replaced.

2258. The directors shall act as mandataries of the association.

Their only powers are those conferred on them by the contract of association or by law, or those arising from their mandate.

2259. The directors may sue and be sued to assert the rights and interests of the association.

2260. Every member is entitled to participate in the collective decisions, and he cannot be prevented from exercising that right by the contract of association.

The collective decisions, including those to amend the contract of association, are taken by a majority vote of the members, unless otherwise stipulated in the contract.

2261. Notwithstanding any stipulation to the contrary, any member may personally inform himself of the affairs of the association and consult its books and records even if he is excluded from management.

In exercising this right, the member is bound neither to impede the activities of the association unduly nor to prevent the other members from exercising the same right.

2262. Where the property of the association is insufficient, the directors and any member administering de facto the affairs of the association are solidarily or jointly liable for the obligations of the association arising during their administration, whether or not the obligations have been contracted for the service or operation of an enterprise of the association.

The property of each of these persons shall not be applied to the payment of creditors of the association, however, until after his own creditors are paid.

2263. A member who has not administered the association is liable for the debts of the association only up to the promised contribution and the subscriptions due for payment.

2264. Notwithstanding any stipulation to the contrary, a member may withdraw from the association, even if it has been

established for a fixed term; if he withdraws, he is bound to pay the promised contribution and any subscriptions due.

A member may be excluded from the association by decision of the members.

2265. A contract of association is terminated by the expiry of its term or the fulfilment of the condition attached to the contract, by the accomplishment of the object of the contract or by the impossibility of accomplishing that object.

It is also terminated by decision of the members.

2266. When a contract of association is terminated, the association shall be liquidated by a person appointed by the directors or, failing that, by the court.

2267. After payment of the debts, the remaining property shall devolve in accordance with the rules respecting the contract of association or, failing special rules, it shall be shared equally among the members.

However, any property derived from contributions of third persons, devolves, notwithstanding any stipulation to the contrary, to an association or trust sharing objectives similar to those of the association; if that is not possible, it devolves to the State and is administered by the Public Curator as property without an owner or, if of little value, is shared equally among the members.

CHAPTER XI

DEPOSIT

SECTION I

DEPOSIT IN GENERAL

§ 1.—*General provisions*

2268. Deposit is a contract by which a person, the depositor, hands over movable property to another person, the depositary, who undertakes to keep it for a certain time and to restore it.

Deposit is gratuitous but may be by onerous title where permitted by usage or an agreement.

2269. Handing over of the property to be deposited is essential for the completion of the contract of deposit.

Fictitious handing over is sufficient where the depositary already has detention of the property under another title.

2270. Where the deposit has been made with a minor person or with a person under protective supervision, the depositor may revendicate the property deposited so long as it remains in the hands of that person; where restitution in kind is impossible, he is entitled to claim the value of the property up to the amount of the enrichment of the person who received it.

§ 2.—*Obligations of depositary*

2271. The depositary must act with prudence and diligence for the safekeeping of the property; he cannot use it without the permission of the depositor.

2272. The depositary cannot require the depositor to prove that he is the owner of the property deposited, or require such proof of the person to whom the property must be restored.

2273. The depositary is bound to restore the deposited property to the depositor on demand, notwithstanding any time that may have been fixed for restitution.

Where the depositary has issued a receipt or any other document evidencing the deposit or giving the person holding it the right to withdraw the property, he may require that the document be returned to him.

2274. The depositary shall return the identical property he received on deposit.

Where the depositary has received something to replace property that had perished by superior force, he shall return what he has received to the depositor.

2275. The depositary is bound to restore the fruits and revenues he has received from the property deposited.

The depositary owes interest on money deposited only when he is in default of restoring the money.

2276. Where the heir or other legal representative of the depositary sells in good faith property deposited without his

knowledge, he is bound only to return the price he has received or to assign his claim against the purchaser if the price has not been paid.

2277. Where a deposit is gratuitous, the depositary is liable for the loss of the property deposited, if caused by his fault; where a deposit is by onerous title, he is liable for the loss of the property, unless he proves superior force.

2278. The court may reduce the damages payable by the depositary where the deposit is gratuitous or where the depositary received in deposit documents, money or other valuables the nature or value of which was not declared by the depositor.

2279. Where the deposit is gratuitous, the cost of restoration of the property shall be borne by the depositor, but it shall be borne by the depositary if he, without the knowledge of the depositor, has transported the property elsewhere than the place agreed for its restoration, unless he did it to preserve the property.

Where the deposit is by onerous title, the cost of restoration shall be borne by the depositary.

§ 3.—*Obligations of depositor*

2280. The depositor is bound to reimburse the depositary for any expenses he has incurred for the preservation of the property, to indemnify him for any loss the property may have caused him and to pay him the agreed remuneration.

The depositary is entitled to retain the deposited property until he is paid.

2281. The depositor is liable to indemnify the depositary for any injury caused to him by the premature restitution of the property if the term was agreed upon in the sole interest of the depositary.

SECTION II

NECESSARY DEPOSIT

2282. Necessary deposit takes place where a person is compelled by urgent necessity to entrust the custody of property to another person.

2283. The depositary cannot refuse to accept the property without a serious reason.

The depositary is liable for loss of the property in the same manner as a depositary by gratuitous title.

2284. The deposit of property in a health or social services establishment is presumed to be a necessary deposit.

SECTION III

DEPOSIT WITH INNKEEPER

2285. A person who offers lodging to the public, called the innkeeper, is liable in the same manner as a depositary by onerous title for the loss of the personal effects and baggage brought by persons who lodge with him, up to ten times the cost of lodging for one day or, in the case of property he has accepted for deposit, up to fifty times such cost.

2286. An innkeeper is bound to accept for deposit the documents, sums of money and other valuables belonging to his guests; he cannot refuse them unless they are dangerous or cumbersome.

The innkeeper may examine the property handed over to him for deposit and require it to be placed in a closed or sealed receptacle.

2287. Notwithstanding the foregoing, the liability of the innkeeper is unlimited where the loss of property belonging to a guest is caused by the intentional or gross fault of the innkeeper or of a person for whom he is responsible.

The liability of the innkeeper is also unlimited where he refuses the deposit of property he is bound to accept, or where he has not taken the necessary measures to inform the guest of the limits of his liability.

2288. The innkeeper is entitled to retain, as security for payment of the cost of lodging and services actually provided by him, the effects and baggage brought into the hotel by the guest, except his personal documents and effects of no market value.

2289. The innkeeper may dispose of the property retained, failing payment, in accordance with the rules prescribed in Book IV, Property, which apply to the holder of property entrusted and forgotten.

2290. The innkeeper is bound to post up the text of the articles of this section, printed in legible type, in the offices, public rooms and bedrooms of his establishment.

SECTION IV

SEQUESTRATION

2291. Sequestration is the deposit of property which is in dispute in the hands of another person chosen by them, who binds himself to restore it, once the issue is decided, to the person who will then be entitled to it.

2292. The object of sequestration may be immovable property as well as movable property.

An immovable is handed over by abandonment of detention of the immovable to the sequestrator.

2293. The parties shall elect the sequestrator by mutual agreement; they may elect one of their number to act as sequestrator.

Where the parties disagree on the election of a sequestrator or on certain conditions attached to his duties, they may apply to the court for a ruling on the issue.

2294. A sequestrator cannot make any disbursement or perform any act other than acts of simple administration in respect of the sequestered property unless otherwise stipulated or unless authorized by the court.

He may, however, with the consent of the parties or, failing that, with the authorization of the court, alienate, without delay or formalities, property which entails costs of custody or maintenance disproportionate to its value.

2295. The sequestrator is discharged, upon the termination of the contestation, by the restitution of the property to the person entitled to it.

The sequestrator cannot be discharged and restore the property before the contestation is terminated except with the consent of all the parties or, failing that, for sufficient cause, in which case the discharge must be authorized by the court.

2296. The sequestrator shall render an account of his management at the end of his administration, and also earlier at the request of the parties or by order of the court.

2297. A sequestrator may be appointed by judicial authority; in such a case, he is subject to the provisions of the Code of Civil Procedure and to the rules contained in this chapter, so far as they are consistent.

CHAPTER XII

LOAN

SECTION I

NATURE AND KINDS OF LOANS

2298. There are two kinds of loans: loan for use and simple loan.

2299. Loan for use is a gratuitous contract by which a person, the lender, hands over property to another person, the borrower, for his use, under the obligation to return it to him after a certain time.

2300. A simple loan is a contract by which the lender hands over a certain quantity of money or other property that is consumed by the use made of it, to the borrower, who binds himself to return a like quantity of the same kind and quality to the lender after a certain time.

2301. A simple loan is presumed to be made by gratuitous title unless otherwise stipulated or unless it is a loan of money, in which case it is presumed to be made by onerous title.

2302. A promise to lend confers on the beneficiary of the promise, failing fulfilment of the promise by the promisor, only the right to claim damages from the promisor.

SECTION II

LOAN FOR USE

2303. The borrower is bound to act with prudence and diligence for the safekeeping and preservation of the loaned property.

2304. The borrower cannot put the loaned property to a use other than that for which it is intended; nor may he allow a third person to use it without the authorization of the lender.

2305. The lender may claim the property before the due term or, if the term is indeterminate, before the borrower ceases to need it, where he himself is in urgent and unforeseen need of the property or where the borrower dies or fails to perform his obligations.

2306. The borrower is entitled to the reimbursement of any expenses he has incurred for the preservation of the loaned property, if they were necessary and so urgent that he could not inform the lender.

The borrower alone shall bear the expenses he has incurred in using the property.

2307. Where the lender knew that the loaned property had safety defects or latent defects but failed to inform the borrower, he is liable to reparation for any injury suffered by the borrower as a result.

2308. The borrower is not liable for loss of the property resulting from the use for which it is loaned.

Where, however, the borrower puts the property to a use other than that for which it is intended, or uses it for a longer time than agreed, he is liable for its loss unless it is caused by superior force.

2309. Where the loaned property perishes by superior force and the borrower could have protected it by using his own property or if, being unable to save both, he chose to save his own, he is liable for the loss.

2310. The borrower cannot retain the property for what the lender owes him unless the debt is an urgent and necessary expense incurred for the preservation of the property.

2311. An action in reparation of injury caused by the fault of a third person to the loaned property may be taken by the lender or the borrower, whichever is the more diligent.

2312. Where several persons borrow the same property together, they are solidarily liable towards the lender.

SECTION III

SIMPLE LOAN

2313. By simple loan, the borrower becomes the owner of the loaned property and he bears the risks of loss of the property from the time it is handed over to him.

2314. The lender is liable, in the same manner as the lender for use, for any injury resulting from defects in the loaned property.

2315. The borrower is bound to return the same quantity and quality of property as he received and nothing more, notwithstanding any increase or reduction of its price.

In the case of a loan of a sum of money, the borrower is bound to return only the nominal amount received, notwithstanding any variation in its value.

2316. The loan of a sum of money bears interest from the date the money is handed over to the borrower.

2317. The discharge of the principal of a loan of money entails the discharge of the interest.

2318. In the case of a loan of a sum of money, the court may pronounce the nullity of the contract, order the reduction of the obligations arising from the contract or revise the terms and conditions of the performance of the obligations to the extent that it finds that, having regard to the risk and to all the circumstances, one of the parties has suffered lesion.

CHAPTER XIII

SURETYSHIP

SECTION I

NATURE, OBJECT AND EXTENT OF SURETYSHIP

2319. Suretyship is a contract by which a person, the surety, binds himself towards the creditor, gratuitously or for remuneration, to perform the obligation of the debtor if he fails to fulfil it.

2320. Suretyship may result from an agreement, or may be established by law or ordered by judgment.

2321. Suretyship is not presumed; it must be express.

2322. A person may become surety for an obligation without the order or even the knowledge of the person for whom he binds himself.

A person may also become surety not only for the principal debtor but also for his surety.

2323. A debtor bound to furnish a surety shall offer a surety having and maintaining sufficient property in Québec to meet the object of the obligation and having his domicile in Canada; otherwise, he shall furnish another surety.

This rule does not apply where the creditor has required that a specific person should be the surety.

2324. Where a debtor is bound to furnish a legal or judicial surety, he may offer any other sufficient security instead.

2325. Any dispute as to the sufficiency of the property of the surety or the sufficiency of the security offered shall be decided by the court.

2326. Suretyship can only be for a valid obligation.

It may, however, be for the fulfilment of an obligation which is purely natural or from which the principal debtor may be discharged by invoking his inability.

2327. Suretyship cannot exceed the amount owed by the debtor or be contracted under more onerous conditions.

Suretyship which does not meet that requirement is not null; it is only reducible to the measure of the principal obligation.

2328. Suretyship may be contracted for only part of the principal obligation and under less onerous conditions.

2329. A suretyship cannot be extended beyond the limits for which it was contracted.

2330. Suretyship extends to all the accessories of the original obligation, even to the costs of the original action, and to all costs subsequent to notice of such action given to the surety.

SECTION II

EFFECTS OF SURETYSHIP

§ 1.—*Effects between creditor and surety*

2331. At the request of the surety, the creditor is bound to provide him with any useful information respecting the content and the terms and conditions of the principal obligation and the progress of its performance.

2332. The surety is bound to fulfil the obligation of the debtor only if the debtor fails to perform it.

2333. A conventional or legal surety enjoys the benefit of discussion unless he renounces it expressly.

2334. A surety who avails himself of the benefit of discussion shall invoke it in any action taken against him, indicate to the creditor the seizable property of the principal debtor, and advance to him the sums required for the costs of discussion.

Where the creditor neglects to carry out the discussion, he is liable towards the surety, up to the value of the property indicated, for any insolvency of the principal debtor occurring after the surety has indicated the seizable property of the principal debtor.

2335. Where several persons become sureties of the same debtor for the same debt, each of them is liable for the whole debt but may invoke the benefit of division if he has not renounced it expressly in advance.

Each surety who avails himself of the benefit of division may require the creditor to divide his action and to reduce it to the amount of the share and portion of each surety.

2336. If, at the time division was obtained by one of the sureties, some of them were insolvent, that surety is proportionately liable for their insolvency, but he cannot be made liable for insolvencies occurring after the division.

2337. Where the creditor has himself voluntarily divided his action, he cannot call the division into question, although at the time some of the sureties had become insolvent.

2338. Where the surety binds himself with the principal debtor as solidary surety or solidary codebtor, the effects of his undertaking

are governed by the rules established with respect to solidary debts so far as they are consistent with the nature of the suretyship.

2339. A surety, whether or not he is a solidary surety, may set up against the creditor all the defences of the principal debtor, except those which are purely personal to the principal debtor or that are excluded by the terms of his undertaking.

2340. Mere prorogation of the term granted by the creditor to the principal debtor does not discharge the surety, but forfeiture of the term by the principal debtor produces its effects in respect of the surety.

2341. A surety cannot renounce in advance the right to be provided with information or the benefit of subrogation.

§ 2.—*Effects between debtor and surety*

2342. A surety who has bound himself with the consent of the debtor may claim from him what he has paid in principal, interest and costs, in addition to damages for any injury he has suffered by reason of the suretyship; he may also charge interest on any sum he has had to pay to the creditor, even if the principal debt was not producing interest.

A surety who has bound himself without the consent of the debtor can only recover from him what the debtor would have been bound to pay, including damages, if there had been no suretyship; however, costs subsequent to indication of the payment are payable by the debtor.

2343. Where the principal debtor has been released from his obligation by invoking his inability, the surety has, to the extent of the resulting enrichment of the debtor, a remedy for reimbursement against him.

2344. A surety having paid a debt has no remedy against the principal debtor who pays it subsequently, if he failed to inform the debtor that he had paid it.

A surety who has paid without informing the principal debtor has no remedy against him if, at the time of the payment, the debtor had defences that could have enabled him to have the debt declared extinct. In these circumstances, the surety has a remedy only for the amount the debtor could have been required to pay, to the extent that the debtor could set up other defences against the creditor to cause the debt to be reduced.

In any case, the surety retains his right of action for recovery against the creditor.

2345. A surety who has bound himself with the consent of the debtor may take action against him, even before paying, if he is sued for payment or the debtor is insolvent, or if the debtor has bound himself to effect his acquittance within a certain time.

The same rule applies where the debt becomes payable by the expiry of its term, disregarding any extension granted to the debtor by the creditor without the consent of the surety, or where, by reason of losses incurred by the debtor or of any fault committed by the debtor, the surety is at appreciably higher risk than at the time he bound himself.

§ 3.—*Effects between sureties*

2346. Where several persons have become sureties of the same debtor for the same debt, the surety who has paid the debt has in addition to the action in subrogation, a personal right of action against the other sureties, each for his share and portion.

The personal right of action can only be exercised where the surety has paid in one of the cases in which he could take action against the debtor before paying.

Where one of the sureties is insolvent, his insolvency is apportioned by contribution among the other sureties, including the surety who made the payment.

SECTION III

TERMINATION OF SURETYSHIP

2347. Notwithstanding any contrary provision, the death of the surety terminates the suretyship.

The heirs of the surety are then liable only for the debts existing at the time of his death, even if these debts are subject to a condition or a term.

2348. Where the suretyship is contracted for an indeterminate period or amount, the surety may terminate it after three years, so long as the debt has not become exigible, by giving prior and sufficient notice to the debtor, the creditor and the other sureties.

This rule does not apply in the case of a judicial suretyship.

2349. A suretyship attached to the performance of special duties is terminated upon cessation of the duties.

2350. Where, as a result of the act of the creditor, the surety can no longer be usefully subrogated to his rights, the surety is discharged to the extent of the injury he has suffered.

2351. Where a creditor voluntarily accepts property in payment of the principal debt, the surety is discharged even if the creditor is subsequently evicted.

CHAPTER XIV

ANNUITIES

SECTION I

NATURE OF CONTRACT AND SCOPE OF RULES GOVERNING IT

2352. A contract for the constitution of an annuity is a contract by which a person, the debtor, undertakes, gratuitously or in exchange for the alienation of capital for his benefit, to make periodical payments to another person, the annuitant, for a certain time.

The capital may consist of immovable or movable property; if it is a sum of money, it may be paid in a lump sum or by instalments.

2353. Where the debtor undertakes to pay the annuity in return for the transfer, for his benefit, of ownership of an immovable, the contract is called alienation for rent and it is principally governed by the rules respecting contracts similar to contracts of sale.

2354. An annuity may be constituted for the benefit of a person other than the person who furnishes the capital.

In such a case, the contract is not subject to the forms required for gifts even though the annuity so constituted is received gratuitously by the annuitant.

2355. An annuity may be constituted by contract, will, judgment or law.

The rules of this chapter, adapted as required, apply to such annuities.

SECTION II

SCOPE OF CONTRACT

2356. An annuity may be constituted for life or for a fixed term.

A life annuity is an annuity payable for a duration limited to the lifetime of one or several persons.

A fixed term annuity is an annuity payable for a duration determined otherwise.

2357. A life annuity may be set up for the lifetime of the person who constitutes it or receives it or for the lifetime of a third person who has no entitlement whatever to enjoyment of the annuity.

It may be stipulated, however, that the payment of the annuity will continue beyond the death of the person for whose lifetime the duration of payment was constituted, for the benefit, as the case may be, of a determinate person or of the heirs of the annuitant.

2358. A life annuity set up for the lifetime of a person who is dead on the day the debtor is to begin paying the annuity or who dies within the following thirty days is without effect.

Similarly, a life annuity set up for the lifetime of a person who does not exist on the day on which the debtor is to begin paying the annuity, unless the person was conceived at that time and is born alive and viable, is without effect.

2359. Where a life annuity is set up for the lifetime of several persons successively, it has effect only if the first of those persons exists on the day the debtor is to begin paying the annuity or if he is conceived at that time and is born alive and viable.

It terminates where the persons concerned are dead or are not born alive and viable, but not later than one hundred years after it is constituted.

2360. A non-returnable loan is presumed to constitute a life annuity for the benefit and for the lifetime of the lender.

2361. The duration of payment of any annuity, whether or not it is a life annuity, is in all cases limited or reduced to one hundred years after it is constituted even if the contract provides for a longer duration or constitutes a successive annuity.

SECTION III

CERTAIN EFFECTS OF CONTRACT

2362. A stipulation to the effect that the annuity is unseizable and inalienable is without effect unless the annuity is received gratuitously by the annuitant and, even in such a case, the stipulation has effect only up to the amount of the annuity necessary for the annuitant as support.

2363. Any capital accumulated for the payment of the annuity is unseizable where the annuity must be paid to the annuitant and to his substitute, so long as the capital is applied to the payment of an annuity.

Only that part of the capital is unseizable, however, which, in the estimation of the seizing creditor, the debtor and the annuitant or, if they disagree, the court, would be necessary, for the duration fixed in the contract, for the payment of an annuity which would meet the requirements of the annuitant and his family for support.

2364. The designation or revocation of an annuitant, other than the person who furnished the capital of the annuity, is governed by the rules respecting stipulations for the benefit of a third person.

The designation or revocation of an annuitant, in respect of annuities transacted by insurers or of retirement plan annuities, is governed, however, by those rules respecting the contract of insurance which relate to beneficiaries and subrogated holders, adapted as required.

2365. A stipulation may be made to the effect that a life annuity constituted for the benefit of two or more annuitants jointly is revertible, on the death of one of them, upon the life of the annuitants who survive him.

Similarly, a life annuity constituted for the benefit of spouses is presumed, on the death of either spouse, to be revertible upon the life of the surviving spouse.

2366. The life annuity is due to the annuitant only in proportion to the number of days in the lifetime of the person upon whose life the duration of payment of the annuity was established, and the annuitant cannot require payment of the annuity unless he establishes the existence of the person.

Where it was stipulated that the annuity would be paid in advance, however, every amount that should have been paid is acquired from the day payment was to have been made.

2367. Payments shall be made at the end of each month and the amount due shall be computed from the day the debtor is to begin paying the annuity.

2368. In no case may the debtor free himself from the payment of the annuity by offering to reimburse the capital value of the annuity and renouncing the recovery of the annuity payments made; he shall pay the annuity for the whole duration stipulated in the contract.

2369. The debtor of an annuity may appoint an authorized insurer to replace him, by paying him the value of the annuity.

Similarly, the owner of an immovable charged with security for the payment of the annuity may substitute the security offered by an authorized insurer for the security attached to the annuity.

The annuitant cannot object to the substitution, but he may require that the purchase of the annuity be made with another insurer, or he may contest the determined capital value or the value of the annuity arising therefrom.

2370. The substitution releases the debtor or the owner of the immovable charged with security for the payment of the annuity, upon payment of the required capital; it binds the insurer towards the annuitant and, as the case may be, entails the extinction of the hypothec securing the payment of the annuity.

2371. The non-payment of the annuity is not a reason to permit the annuitant to demand recovery of the capital alienated for the constitution of the annuity; it only allows him, beyond demanding payment of the amount due, to seize and sell the property of the debtor, and to require or order the use of a sufficient amount, from the proceeds of the sale, to ensure payment of the annuity or to require that the debtor be replaced by an authorized insurer.

Payment of the capital may be required, however, if the debtor becomes insolvent or bankrupt or decreases, by his act and without the consent of the annuitant, the security he has furnished to ensure the payment of the annuity.

2372. Where the payment of an annuity is secured by a hypothec on property that is to be the subject of a forced sale, the

annuitant cannot require that the sale be carried out subject to his annuity, but if his hypothec ranks first, he may require the creditor to furnish him with sufficient surety to ensure that the annuity continues to be paid.

Failure to furnish a surety entitles the annuitant, according to his rank, to receive the capital value of the annuity on the day of collocation or distribution.

2373. The capital value of an annuity is always estimated to be equal to the amount that would be sufficient to acquire an annuity of equivalent value from an authorized insurer.

CHAPTER XV

INSURANCE

SECTION I

GENERAL PROVISIONS

§ 1.—*Nature of contract of insurance and classes of insurance*

2374. A contract of insurance is a contract whereby the insurer undertakes, for a premium or assessment, to make a payment to the client or a third person if an event covered by the insurance occurs.

Insurance is divided into marine insurance and non-marine insurance.

2375. The object of marine insurance is to indemnify the insured against losses incident to marine adventure.

2376. Non-marine insurance is divided into insurance of persons and damage insurance.

Non-marine insurance is also divided into individual insurance and group insurance.

2377. Insurance of persons deals with the life, physical integrity or health of the insured.

2378. Life insurance guarantees payment of the agreed amount upon the death of the insured; it may also guarantee payment of the agreed amount during the lifetime of the insured, on his surviving a specified period or on the occurrence of an event related to his existence.

Life or fixed-term annuities transacted by insurers are assimilated to life insurance but remain also governed by the chapter on *Annuities*.

2379. Clauses of accident and sickness insurance which are accessory to a contract of life insurance and clauses of life insurance which are accessory to a contract of accident and sickness insurance are governed by the rules governing the principal contract.

2380. Damage insurance protects the insured from the consequences of an event that may adversely affect his patrimony.

2381. Damage insurance includes property insurance, the object of which is to indemnify the insured for material loss, and liability insurance, the object of which is to protect the insured against the pecuniary consequences of the liability he may incur for damage to a third person by reason of an injurious act.

2382. The contract of reinsurance has effect only between the insurer and the reinsurer.

§ 2.—*Formation and content of contract*

2383. A contract of insurance is formed upon acceptance by the insurer of the application of the client.

2384. The policy is the document evidencing the existence of the contract of insurance.

In addition to the names of the parties to the contract and the names of the persons to whom the insured sums are payable or, if those persons are not determined, a means to identify them, the policy must set out the object of the insurance, the amount of coverage, the nature of the risks insured, the time from which the risks are covered and the term of the coverage as well as the amount and rate of the premiums and the dates on which they are due.

2385. In non-marine insurance, the insurer shall furnish the policy to the client, together with a copy of any application made in writing by the client or on his behalf.

In case of discrepancy between the policy and the application, the latter prevails unless the insurer has, in a separate document, indicated the discrepancies to the client.

2386. In group insurance, the insurer shall issue the group insurance policy to the client and furnish to him the insurance certificates, which he must distribute to the participants.

Participants and beneficiaries may examine and make copies of the policy at the place of business of the client and, in case of discrepancies between the policy and the insurance certificate, they may invoke either one according to their interest.

2387. In non-marine insurance, any general clause whereby the insurer is released from his obligations if an Act is violated is deemed to be without effect, unless the violation is an indictable offence.

Any clause of a policy whereby the insured undertakes, if he sustains a loss, to effect an assignment of claim to his insurer that would result in granting his insurer more rights than he would have under the rules on subrogation is also deemed to be without effect.

2388. Subject to the special provisions on marine insurance, the insurer cannot invoke conditions or representations not written in the contract.

2389. In insurance of persons, the insurer cannot invoke any exclusions or clauses of reduction of coverage except those clearly indicated under an appropriate heading.

2390. In non-marine insurance, changes to the contract made by the parties are evidenced by riders attached to the policy.

Any rider stipulating a reduction of the insurer's liability or an increase in the insured's obligations, other than an increased premium, has no effect unless the policyholder consents to the change in writing. The same applies to any change made to the contract upon its renewal.

2391. The representations of a participant in group insurance may be invoked against him only if the insurer has furnished him with a copy of them.

2392. A certificate of participation in a mutual association may establish the rights and obligations of the members by reference to the articles of the association, but only the constituting instrument and those by-laws which are specifically indicated in the certificate may be invoked against the members.

Every member is entitled to a copy of the articles of the association in force.

§ 3.—*Representations and warranties of insured in non-marine insurance*

2393. The client, and the insured if the insurer requires it, is bound to represent all the facts known to him which are likely to materially influence an insurer in the setting of the premium, the appraisal of the risk or the decision to cover it, but he is not bound to represent facts known to the insurer or which from their notoriety he is presumed to know, except in answer to inquiries.

2394. The obligation respecting representations is deemed properly met if the representations are such as a well-informed applicant would make, if they are made without material concealment and if the facts are substantially as represented.

2395. Subject to the provisions on statement of age and risk, any misrepresentation or concealment of relevant facts by either the client or the insured nullifies the contract at the instance of the insurer, even in respect of losses not connected with the risks so misrepresented or concealed.

2396. In damage insurance, unless the bad faith of the client is established or unless it is established that the insurer would not have covered the risk if he had known the true facts, the insurer remains liable towards the insured for such proportion of the indemnity as the premium he collected bears to the premium he should have collected.

2397. A breach of warranty aggravating the risk suspends the coverage. The suspension ceases upon the acquiescence of the insurer or the remedy of the breach.

2398. Where the representations contained in the application for insurance have been entered or suggested by the representative of the insurer or by an insurance broker, proof may be made by testimony that they do not correspond to what was actually represented.

§ 4.—*Special provision*

2399. In non-marine insurance, no derogation from the provisions of this chapter may be made by agreement, except to the extent that the derogation is more favourable to the insured, the participant, the beneficiary or the policyholder, when the derogation is from an article adopted for the protection of one or the other of those persons.

Even where that is the case, any stipulation which derogates from the rules on insurable interest or, in liability insurance, from those protecting the rights of injured third persons is null.

SECTION II

INSURANCE OF PERSONS

§ 1.—*Contents of policy*

2400. In addition to the particulars prescribed for policies generally, a policy of insurance of persons must set out, if applicable, the name of the insured or a means to identify him, the time limits for payment of premiums, the right of the holder to participate in the profits, the method or table according to which the surrender value is established and the rights relating to the surrender value of or advances on the policy.

The policy must also set out, if applicable, the conditions of reinstatement, the right to convert the insurance, the terms and conditions of payment of sums due and the period during which benefits are payable.

2401. In an accident and sickness policy, the insurer must set out, expressly and in clearly legible characters, the nature of the coverage stipulated in it.

Where the contract provides coverage against disability, he must set out in the same manner the terms and conditions of payment of the indemnities and the nature and extent of the disability covered. Failing clear indication as to the nature and extent of the disability covered, the inability to carry on one's usual occupation constitutes the disability.

2402. In accident and sickness insurance, the insurer cannot, except in case of fraud, exclude or reduce the coverage by reason of a disease or ailment disclosed in the application except under a clause referring by name to the disease or ailment.

Except in the case of fraud, an insurer cannot, by a general clause, exclude or limit the coverage by reason of a disease or ailment not disclosed in the application unless the disease or ailment appears within the first two years of the insurance.

§ 2.—*Insurable interest*

2403. In individual insurance, a contract is null if at the time the contract is made the client has no insurable interest in the life or health of the insured, unless the insured consents in writing.

Subject to the same reservation, the transfer of such a contract is null if the transferee does not have the required interest at the time of the transfer.

2404. A person has an insurable interest in his own life and health and in the life and health of his spouse, of his descendants and the descendants of his spouse, or of persons who contribute to his support or education.

He also has an interest in the life and health of his employees and staff or of persons in whose life and health he has a pecuniary or moral interest.

§ 3.—*Representation of age and risk*

2405. Misrepresentation of the age of the insured does not entail the nullity of the insurance. In such circumstances, the sum insured is adjusted in such proportion as the premium collected bears to the premium that should have been collected.

In accident and sickness insurance, however, the insurer may elect to adjust the premium to make it correspond to the premium applicable to the true age of the insured.

2406. In life insurance, the insurer may bring an action for the annulment of the contract if, at the time of formation of the contract, the age of the insured exceeds the limits fixed by the insurer's rates.

The insurer must bring the action within three years of the making of the contract, during the life-time of the insured and within sixty days after becoming aware of the error.

2407. In accident and sickness insurance, the true age is the determining factor in cases where the commencement or termination of the insurance depends on the age of the insured.

In life insurance, the true age is also the determining factor for termination of a contract which is to terminate at a specified age, where the misrepresentation of age is discovered before the death of the insured.

2408. In group insurance, misrepresentation or concealment by a participant as to age or risk affects only the insurance of the persons who are the subject of the misrepresentation or concealment.

2409. In the absence of fraud, misrepresentation or concealment as to risk cannot justify the annulment or reduction of insurance which has been in force for two years.

This rule does not apply in the case of disability insurance if the disability begins during the first two years of the insurance.

§ 4.—*Effective date*

2410. Life insurance takes effect when the application is accepted by the insurer, provided that it is accepted without modification, that the initial premium has been paid, and that there has been no change in the insurability of the risk since the application was signed.

2411. Accident and sickness insurance takes effect upon the delivery of the policy to the client, even if it is delivered by a person other than a representative of the insurer.

A policy issued in accordance with the application and given to a representative of the insurer for unconditional delivery to the client is also validly delivered.

§ 5.—*Premiums, advances and reinstatement*

2412. In life insurance, the policyholder is entitled to thirty days for the payment of each premium, except the initial premium; the insurance remains in force during the thirty days, but failure to pay the premium within that period terminates the insurance.

The period runs concurrently with any other period granted by the insurer, but it cannot be reduced by agreement.

2413. When payment is made by bill of exchange, it is deemed made only if the bill is honoured when first presented.

The payment is also deemed made when the bill is not honoured by reason of the death of the person who issued the bill of exchange, subject to payment of the premium.

2414. The premium does not bear interest during the period allowed for payment, except in group insurance.

Where the insurer is entitled to interest on a premium due, the interest cannot be at a higher rate than that fixed by the regulations made to that effect by the Government.

2415. No accident and sickness insurance contract that is in force may be cancelled for non-payment of the premium unless fifteen day's prior notice in writing is given to the debtor.

2416. The insurer is bound to reinstate individual life insurance that has been cancelled for non-payment of the premium if the policyholder applies to him therefor within two years from the date of the cancellation and establishes that the insured still meets the conditions required to be insured under the cancelled contract. The policyholder is bound in that case to pay the overdue premiums and repay the advances he has obtained on the policy, with interest at a rate not exceeding the rate fixed by the regulations made to that effect by the Government.

The insurer is not bound by the first paragraph if the surrender value has been paid or if the policyholder has elected for a reduction or extension of coverage.

2417. Any payment that must be made for the reinstatement of a contract may be made out of advances receivable on the policy up to the amount stipulated in the contract.

2418. The insurer may require the payment of overdue premiums when settling a claim under a group life insurance contract or an accident and sickness insurance contract.

The insurer may also, when settling a claim under a personal insurance contract, deduct the amount of any overdue premium out of the benefits payable.

2419. Upon the reinstatement of a contract of insurance, the two year period during which the insurer may bring an action for the annulment of the contract or reduction of coverage by reason of misrepresentation or concealment relating to the risk, or by reason of the application of a clause of exclusion of coverage in case of the suicide of the insured, runs again.

§ 6.—*Performance of the contract of insurance*

2420. The holder of an accident and sickness policy or the beneficiary or insured must give written notice of loss to the insurer

within thirty days of acquiring knowledge of it. He must also, within ninety days, transmit all the information to the insurer that he may reasonably expect as to the circumstances and extent of the loss.

The person entitled to the payment is not prevented from receiving it if he proves that it was impossible for him to act within the prescribed time, provided the notice is sent to the insurer within one year of the loss.

2421. The insurer is bound to pay the sums insured and the other benefits provided in the policy, in accordance with the conditions of the policy, within thirty days after receipt of the required proof of loss.

In accident and sickness insurance, the period is sixty days, unless the policy covers losses of income due to disability.

2422. Where the insurance covers losses of income due to disability and the policy stipulates a waiting period, the thirty day period for payment of the first indemnity runs from the expiry of the waiting period.

Subsequent payments are made at intervals of not more than thirty days, provided that proof is furnished to the insurer on request.

2423. The insured must submit to a medical examination when the insurer is entitled to require it owing to the nature of the disability.

2424. In accident and sickness insurance, where an aggravation of the occupational risk has lasted for six months or more, the insurer may reduce the indemnity provided under the policy to the amount payable for the new risk according to the premium stipulated in the policy.

Where there is a reduction of the occupational risk, the insurer is bound, from receipt of a notice to that effect, to reduce the rate of the premium or to extend the insurance by applying the rate corresponding to the new risk, as the client may elect.

2425. The heirs of the beneficiary of an insurance contract may require the insurer to make a single lump sum payment to them of any sums payable by instalments.

2426. The insurer cannot refuse payment of the sums insured by reason of the suicide of the insured unless he stipulated an express

clause of exclusion of coverage in such a case and, even then, the stipulation is without effect if the suicide occurs after two years of uninterrupted insurance.

2427. A contract of insurance for funeral expenses whereby a person undertakes, for a premium paid in a single payment or by instalments, to provide services or goods upon the death of another person, to pay funeral expenses or to set aside a sum of money for that purpose is null.

Only the person who paid the premium or instalments or the Inspector General of Financial Institutions acting on his behalf may bring an action for the annulment of the contract or recovery of the premium.

2428. An attempt on the life of the insured by the policyholder entails, by operation of law, cancellation of the insurance and payment of the surrender value.

An attempt on the life of the insured by a person other than the policyholder entails forfeiture only in respect of that person's right to the coverage.

2429. The benefits established in favour of a member of a mutual benefit association, or of his spouse, ascendants or descendants are unseizable either for debts of the member or debts of the beneficiaries.

§ 7.—*Designation of beneficiaries and subrogated policyholders*

I — Conditions of designation

2430. The sum insured may be payable to the policyholder, the participant or a specified beneficiary.

In individual insurance, the holder of a policy on the life of a third person may designate a subrogated policyholder to replace him upon his death; he may also designate several subrogated policyholders and specify the order in which they will succeed to any preceding policyholder.

The proceeds of a life insurance policy cannot be payable to the bearer.

2431. The designation of beneficiaries or of subrogated policyholders is made in the policy or in another writing which may or may not be in the form of a will.

2432. The beneficiary or the subrogated policyholder need not exist at the time of designation or be then expressly determined; it is sufficient that at the time his right becomes exigible he exist or, if he is conceived but not born, that he be born live and viable and that his quality be recognized.

The designation of a beneficiary is presumed made on the condition that the beneficiary exists at the time the proceeds of the insurance become exigible; the designation of the subrogated policyholder is presumed made on the condition that the person so designated exists at the death of the preceding policyholder.

2433. Where the insured and the beneficiary die at the same time or in circumstances which make it impossible to determine which of them died first, the insured is, for the purposes of the insurance, deemed to have survived the beneficiary. Where the insured dies intestate, leaving no heir within the degrees of succession, the beneficiary is deemed to have survived the insured. In similar circumstances, the preceding policyholder is deemed to have survived the subrogated policyholder.

2434. The designation in a writing other than a will, by the policyholder or participant, of his spouse as beneficiary is irrevocable unless otherwise stipulated. The designation of any other person as beneficiary is revocable unless otherwise stipulated in the policy or in a separate writing other than a will. The designation of a person as subrogated policyholder is always revocable.

Where revocation is permitted, it must result from a writing but need not be express.

2435. A designation or revocation contained in a will that is null by reason of a formal defect is not null for that sole reason; such a designation or revocation is null, however, if the will is revoked.

A designation or revocation made in a will does not avail against another designation or revocation subsequent to the signing of the will. Nor does it avail against a designation prior to the signing of the will unless the will refers to the insurance policy in question or unless the intention of the testator in that respect is manifest.

2436. Regardless of the terms used, every designation of beneficiaries remains revocable until received by the insurer.

2437. Designations and revocations may be set up against the insurer only from the day he receives them; where several irrevocable

designations of beneficiaries are made separately and at different times, they are given priority according to their dates of receipt by the insurer.

The insurer is discharged by payment in good faith in accordance with these rules to the last known person entitled to it.

II — Effects of designation

2438. Beneficiaries and subrogated policyholders are the creditors of the insurer but the insurer may set up against them the causes of nullity or forfeiture that may be invoked against the policyholder or participant.

2439. The policyholder is entitled to the profits and other benefits conferred on him by the contract even if the beneficiary has been designated irrevocably.

Profits and benefits must be applied by the insurer to any premium due to keep the insurance in force.

In either case, the contract may provide otherwise.

2440. Sums insured payable to a beneficiary do not form part of the succession of the insured. Similarly, a contract transferred to a subrogated policyholder does not form part of the succession of the preceding policyholder.

2441. Insurance payable to the succession or to the assigns, heirs, liquidators or other legal representatives of a person pursuant to a stipulation in which those terms or similar terms are employed forms part of the patrimony of such person.

The rules respecting representation of heirs do not apply to insurance matters but those respecting accretion to the benefit of particular legatees apply among co-beneficiaries or subrogated co-policyholders.

2442. Where the designated beneficiary of the insurance is the spouse, descendant or ascendant of the policyholder or of the participant, the rights under the contract are exempt from seizure until the beneficiary receives the sum insured.

2443. A stipulation of irrevocable designation binds the policyholder even if the designated beneficiary has no knowledge of

it. As long as the designation remains irrevocable, the rights conferred by the contract on the policyholder, participant or beneficiary are exempt from seizure.

2444. Separation from bed and board does not affect the rights of the spouse, whether a beneficiary or a subrogated policyholder, but the court may declare them revocable or lapsed when granting a separation.

Divorce or nullity of marriage cause any designation of the spouse as beneficiary or subrogated policyholder to lapse.

2445. Even if the beneficiary has been designated irrevocably, the policyholder and the participant may dispose of their rights, subject to the rights of the beneficiary.

§ 8.—*Assignment and hypothecation of a right under a contract of insurance*

2446. The assignment or hypothecation of a right arising out of a contract of insurance cannot be set up against the insurer, the beneficiary or third persons until the insurer receives notice thereof.

Where a right under a contract of insurance is subject to several assignments or hypothecations priority is determined by the date on which the insurer is notified.

2447. The assignment of insurance confers on the assignee all the rights and obligations of the assignor and entails the revocation of any revocable designation of a beneficiary and of any designation of a subrogated policyholder.

The hypothecation of a right arising out of a contract of insurance confers on the hypothecary creditor only a right to the balance of the debt, interest and accessories and entails revocation of the revocable designation of the beneficiary or the subrogated policyholder only in respect of those amounts.

SECTION III

DAMAGE INSURANCE

§ 1.—*Provisions common to property insurance and liability insurance*

I — Principle of indemnity

2448. In damage insurance, the insurer is obliged to compensate for any injury suffered at the time of the loss but only up to the amount of the insurance.

2449. The insurer is liable to compensate for injury resulting from superior force or the fault of the insured unless a clause of exclusion of liability as to any such event or fact is expressly and restrictively stipulated in the policy. However, the insurer is never liable to compensate for injury resulting from the insured's intentional fault.

Where the insurer is liable for injury caused by a person for whose acts the insured is liable, he is liable for the damage regardless of the nature or gravity of the fault of that person.

2450. The insurer is not liable to indemnify for injury resulting from natural loss, diminution or losses sustained by the property arising from an inherent defect in or the nature of the property.

II — Material change in risk

2451. The insured must promptly notify the insurer of any change that increases the risks stipulated in the policy or that results from events within his control if it is likely to influence materially an insurer in setting the rate of the premium, appraising the risk or deciding to continue to insure it.

If the insured fails to discharge his obligation, the provisions of article 2396 apply, adapted as required.

2452. On being notified of any material change in the risk, the insurer may cancel the contract or propose, in writing, a new rate of premium. Unless the new premium is accepted and paid by the insured within thirty days of the proposal, the policy ceases to be in force.

If the insurer continues to accept the premiums or if he pays an indemnity after a loss has occurred, he is deemed to have acquiesced in the change notified to him.

2453. Unoccupancy of a residence does not constitute a change which increases the risk if it does not last more than thirty consecutive days or if the insurance relates to a second residence designated as such.

Nor does the admission of tradesmen into the residence to do maintenance or repair work for a period of less than thirty days constitute a change which increases the risk.

III — Payment of premium

2454. The insurer is entitled to the premium only from the time the risk begins, and only for its duration if the risk disappears completely as a result of an event that is not covered by the insurance.

The insurer may bring an action for payment of the premium or deduct it from the indemnity payable.

IV — Notice of loss and payment of indemnity

2455. The insured must notify the insurer of any loss which may give rise to an indemnity, as soon as he becomes aware of it. Any interested person may give such notice.

An insurer who has not been so notified may, where he sustains injury therefrom, set up against the insured any clause of the policy providing for forfeiture of the right to indemnity in such a case.

2456. At the request of the insurer, the insured must inform the insurer as soon as possible, of all the circumstances surrounding the loss, including its probable cause, the nature and extent of the damage, the location of the insured property, the rights of third persons, and any concurrent insurance; he must also furnish him with vouchers and attest under oath to the truth of the information.

Where, for a serious reason, the insured is unable to fulfil such obligation, he is entitled to a reasonable time in which to do so.

If the insured fails to fulfil his obligation, any interested person may do so on his behalf.

2457. Any deceitful representation entails the loss of the right of the person making it to any indemnity in respect of the risk to which the representation relates.

However, if the occurrence of the event insured against entails the loss of both movable and immovable property or of both property

for use in business and personal property, forfeiture is incurred only with respect to the class of property to which the representation relates.

2458. The insurer is bound to pay the indemnity within sixty days after receiving the notice of loss or, at his request, the relevant information and vouchers.

2459. The insurer is subrogated to the rights of the insured against the person responsible for the loss, up to the amount of indemnity paid. The insurer may be fully or partly released from his obligation towards the insured where, owing to any act of the insured, he cannot be so subrogated.

The insurer cannot be subrogated against persons who are members of the household of the insured.

V — Transfer

2460. A contract of insurance may be transferred only with the consent of the insurer and in favour of a person who has an insurable interest in the insured property.

2461. Upon the death or bankruptcy of the insured or the transfer of his interest in the insurance to a co-insured, the insurance continues in favour of the heir, trustee in bankruptcy or remaining insured, subject to his performing the obligations that were incumbent upon the insured.

VI — Cancellation of the contract

2462. The insurer may cancel the contract on prior notice which must be sent to every insured named in the policy. The cancellation takes place fifteen days after notice is received by the insured at his last known address.

A contract of insurance may also be cancelled on mere notice in writing given to the insurer by each of the insured named in the policy. The cancellation takes place upon receipt of the notice.

2463. Where the right to the indemnity has been hypothecated and notice has been given to the insurer, the contract cannot be cancelled or amended to the detriment of the hypothecary creditor unless the insurer has given him prior notice of at least fifteen days.

2464. Where the insurance is cancelled the insurer is entitled to only the earned portion of the premium, computed day by day if

the contract is cancelled by the insurer, or at the short-term rate if cancelled by the insured; the insurer must refund any overpayment of premium.

§ 2.—*Property insurance*

I — Content of policy

2465. In addition to the particulars prescribed for insurance policies generally, a property insurance policy must set out any exclusion of coverage not resulting from the ordinary meaning of the words or any limitation of coverage applying to specified objects or classes of objects, and specify the conditions on which the contract may be terminated by the insured, as well as those on which the insurance may be reinstated or continued after a loss.

II — Insurable interest

2466. A person has an insurable interest in a property where the loss or deterioration of the property may cause him direct and immediate damage.

The insurable interest must exist at the time of the loss but the same interest need not have existed throughout the duration of the contract.

2467. Future property and incorporeal property may be the subject of a contract of insurance.

2468. Property insurance may be contracted as insurance for the benefit of the policyholder or as a stipulation in favour of a third person who is beneficiary of the contract, whether known or contingent.

2469. The insurance of a property in which the insured or the participant has no insurable interest is null.

III — Extent of coverage

2470. In fire insurance, the insurer is bound to repair any damage which is an immediate consequence of fire or combustion, whatever the cause, including damage to the property during removal or that caused by the means employed to extinguish the fire, subject to the exceptions specified in the policy. The insurer is also liable for the disappearance of insured things during the fire, unless he proves that the disappearance is due to theft which is not covered.

The insurer is not liable for damage caused solely by excessive heat from a heating apparatus or by any process involving the application of heat where there is no fire or commencement of fire but, even where there is no fire, the insurer is liable for damage caused by lightning or the explosion of fuel.

2471. The insurer is not liable for damage caused by foreign or civil war, riot or civil disturbance, nuclear explosion or the resulting radioactive contamination, or by volcanic eruption, earthquake or other cataclysm.

2472. The insurer is liable for damage to the insured property caused by measures taken to save or protect it.

2473. Insurance of things generally described as being in a certain place covers all things of the same kind which are in that place at the time of the loss.

2474. The insurance of a furnished residence and that of movable property in general covers every class of movable property except what is expressly excluded or what is insured for only a limited amount.

IV — Amount of insurance

2475. The value of the insured property is determined in the ordinary manner unless a special valuation formula is contained in the policy.

2476. In unvalued policies, the amount of insurance does not make proof of the value of the insured property.

In valued policies, the agreed value makes complete proof, between the insurer and the insured, of the value of the insured property.

2477. A contract made without fraud for an amount greater than the value of the insured property is valid up to that value; the insurer has no right to charge any premium for the excess but premiums paid or due remain vested in him.

2478. The insurer cannot refuse to cover a risk for the sole reason that the amount of insurance is less than the value of the insured property. In such a case, he is released by paying the amount of the insurance in the event of total loss or a proportional indemnity in the event of partial loss.

V — Losses, and payment of indemnity

2479. Subject to the rights of preferred and hypothecary creditors, the insurer may reserve the right to repair, rebuild or replace the insured property. He is then entitled to salvage and may take over the property.

2480. The insured cannot abandon the damaged property if there is no agreement to that effect.

The insured must facilitate the salvage and inspection of the insured property by the insurer. He must, in particular, permit the insurer and his representatives to visit the premises and examine the insured property.

2481. Any person who, without fraud, is insured by several insurers, under several policies, for the same interest and against the same risk so that the total amount of indemnity that would result from the separate performance of such policies would exceed the loss incurred may be indemnified by the insurer or insurers of his choice, each being liable only for the amount he has contracted for.

No clause suspending all or part of the performance of the contract by reason of plurality of insurance may be set up against the insured.

Unless otherwise agreed, the indemnity is apportioned among the insurers in proportion to the share of each in the total coverage, except in respect of individual insurance, which constitutes first line insurance.

2482. Notwithstanding any contrary provision, the indemnities due to the insured for secured property are apportioned among the creditors holding preferred claims or hypothecs on the damaged property, according to their rank and without express delegation, upon mere notice and proof by them.

However, payments made in good faith before the notice discharge the insurer.

§ 3.—*Liability insurance*

2483. Civil liability, whether contractual or extracontractual, may be the subject of a contract of insurance.

2484. In addition to the particulars prescribed for insurance policies generally, a liability insurance policy must specify the relation

between persons and property and between persons and acts which entails liability, the amounts of and exclusions from coverage, and the compulsory or optional nature of the insurance and the direct and indirect beneficiaries of it.

2485. The proceeds of the insurance must be applied exclusively to the payment of third persons injured.

2486. An injured third person may bring an action directly against the insured or against the insurer, or against both.

The option chosen in this respect by the third person injured does not deprive him of his other recourses.

2487. The insurer may set up against the injured third person any grounds he could have invoked against the insured at the time of the loss, but not grounds pertaining to facts that occurred after the loss; the insurer has a right of action against the insured in respect of facts that occurred after the loss.

2488. The insurer is bound to take up the interest of any person entitled to the benefit of the insurance and assume his defence in any action brought against him.

Costs and expenses resulting from actions against the insured, including those of the defence, and interest on the proceeds of the insurance are borne by the insurer over and above the proceeds of the insurance.

2489. No transaction made without the consent of the insurer may be set up against him.

SECTION IV

MARINE INSURANCE

§ 1.—*General provisions*

2490. In addition to providing coverage against the losses incident to marine adventure, marine insurance may cover the risks of any adventure analogous to a marine adventure, land risks which are incidental to a marine adventure or risks incident to the building, repair and launch of a ship.

2491. In particular, there is a marine adventure where any ship, goods or other movables are exposed to maritime perils or where

by reason of such perils, civil liability may be incurred by any person interested in, or responsible for, insurable property.

There is also a marine adventure where the earning or acquisition, such as freight, passage money, commission or the security for any advances, loan or disbursement, is endangered by the exposure of insurable property to maritime perils.

2492. Maritime perils include the perils designated by the policy and the perils consequent on or incidental to navigation such as perils of the sea, piracy, restraints, jettisons and barratry, and the capture, restraint, seizure or detainment of the ship or other insurable property by a government.

2493. The insurance of a ship covers the hull of the ship as well as her outfit, stores and provisions, the machinery and boilers and, in the case of a ship engaged in a special trade, the ordinary fittings requisite for that trade, and, if owned by the insured, the bunkers and engine stores.

2494. Insurance on freight covers the profit derivable by a shipowner from the employment of his ship to carry his own goods or other movables as well as freight payable by a third party, but does not include passage money.

2495. The insurance on movable covers all movables not covered by the insurance on the ship.

§ 2.—*Insurable interest*

I — Necessity of interest

2496. The insurable interest need not exist when the contract is made but it must exist at the time of the loss.

The acquisition of an interest after a loss does not validate the insurance. However, where the property is insured "lost or not lost", the insurance is valid although the insured may not have acquired his interest until after the loss provided that, at the time of making the contract, the insured was not aware of the loss.

2497. Every contract of marine insurance by way of gaming or wagering is absolutely null.

There is a gaming or wagering contract where the insured has no insurable interest and the contract is entered into with no expectation of acquiring such an interest.

A contract of marine insurance is deemed to be a gaming or wagering contract where the policy is made "interest or no interest" or "without further proof of interest than the policy itself", or "without benefit of abandonment to the insurer" where there is in fact a possibility of abandonment.

II — Instances of insurable interest

2498. Insurable interest exists where a person is interested in a marine adventure and, in particular, where the relation between that person and the adventure or the insurable property is such that he may incur liability in respect thereof or derive benefit from the safety or due arrival of the insurable property or be prejudice in case of detainment, loss or damage.

2499. A contingent or partial insurable interest subject to annulment may be the subject of a contract of marine insurance.

2500. Insurable interest exists, in particular, for the insurer in respect of the risk insured, for the insured in respect of the charges of insurance effected and the solvency of his insurer and for the master or any member of the crew of a ship in respect of his wages.

Insurable interest also exists for the person advancing freight so far as it is not repayable in case of loss, the purchaser of goods even where he is entitled to reject the goods or treat them as at the seller's risk, and for the hypothecary debtor in respect of the full value of the hypothecated property, and the hypothecary creditor up to the amount of his claim.

III — Extent of interest

2501. A person having an interest in the insured property may insure on behalf and for the benefit of other persons interested as well as for his own benefit.

2502. The owner of insurable property has an insurable interest in respect of the full value thereof, notwithstanding that some third person may have agreed, or be liable, to indemnify him in case of loss.

§ 3.—*Measure of insurable value*

2503. The insurable value is the amount at the risk of the insured when the policy attaches.

The insurable value includes the charges of insurance on the property.

2504. In insurance on ship, the insurable value is the value of the ship plus the money advanced for seamen's wages and any other disbursements incurred to make the ship fit for the voyage or adventure contemplated by the policy.

In insurance on freight, whether paid in advance or otherwise, the insurable value is the gross amount of the freight at the risk of the insured; in insurance on goods, the insurable value is the cost price of the goods plus the expenses of and incidental to shipping.

§ 4.—*Contract and policy*

I — Subscription

2505. The subscription of each insurer constitutes a distinct contract with the insured.

II — Kinds of contracts

2506. A contract may be for a voyage or for a period of time; a contract for both voyage and time may be included in the same policy.

A contract may be valued, unvalued or floating.

2507. A voyage contract covers the insured from one place to another or others and, where specified in the policy, at the place of departure.

A time contract covers the insured for the period of time specified in the policy.

2508. A valued contract is a contract which specifies the agreed value of the insured property.

In the absence of fraud, the value fixed by the policy is, as between the insurer and the insured, conclusive of the value of the insured property whether the loss be total or partial, but is not conclusive for the purpose of determining whether there has been a constructive total loss.

2509. An unvalued contract is a contract which does not specify the value of the insured property but, without exceeding the amount

of coverage, leaves the insurable value to be subsequently ascertained.

Where a declaration of the value of an insured property is not made until after notice of loss or arrival, the contract must be treated as an unvalued contract as regards that property, unless the policy provides otherwise.

2510. A floating contract is a contract which describes the insurance in general terms and leaves the necessary particulars such as the name of the ship to be defined by subsequent declaration.

2511. Subsequent declarations may be made by indorsement on the policy or in other customary manner but, where they pertain to goods to be dispatched or shipped, the declarations must, unless the policy provides otherwise, be made in the order of dispatch or shipment, state the value of the goods and comprise all consignments within the terms of the policy.

Omissions or erroneous declarations made in good faith may be rectified even after loss or arrival.

III — Content of the policy

2512. In addition to the name of the insurer and of the insured or of the person who effects the insurance on his behalf, a marine insurance policy must specify the property insured and the risk insured against, the sums insured, the voyage or period of time covered by the insurance, the date and place of subscription, the amount and rate of the premiums and the dates on which they become due.

IV — Transfer of policy

2513. A marine policy may be transferred either before or after loss.

A marine policy may be transferred by indorsement on the policy or in other customary manner.

2514. Where the insured has alienated or lost his interest in the insured property, and has not, before or at the time of so doing expressly or impliedly agreed to transfer the policy, he cannot subsequently transfer the policy.

2515. The alienation of the insured property does not transfer the insurance except in the case of transmission by operation of law or by succession.

2516. The transferee may enforce his rights directly against the insurer but the insurer may make any defence arising out of the contract which he would have been entitled to make against the insured.

V — Evidence and ratification of the contract

2517. A contract is inadmissible in evidence unless it is embodied in an insurance policy, but once the policy has been issued, customary memorandums of the contract such as the slip or covering note are admissible in evidence for the purpose of determining the actual terms of the contract and showing when the proposal was accepted.

2518. Where a contract is effected in good faith on behalf of another person, that person may ratify it even after he is aware of a loss.

§ 5.—*Rights and obligations of the parties as regards the premium*

2519. The insurer is not bound to issue the policy until payment or tender of the premium.

2520. Where an insurance is effected at a premium to be arranged, and no arrangement is made, a reasonable premium is payable.

The same applies where an insurance is effected on the terms that an additional premium is to be arranged in a given event and that event happens but no arrangement is made.

2521. Where a marine policy is effected on behalf of the insured by a broker, the broker is responsible to the insurer for the premium. In other cases, the insured is responsible.

2522. The insurer is responsible to the insured for the amounts payable. In the event of a loss or return of premium, the insurer is responsible to the insured for such amounts whether or not he has collected the premium from the broker.

2523. Where the consideration for the payment of the premium totally fails and there has been no fraud or illegality on the part of the insured, the premium is returnable to the insured.

Where the consideration for the payment of the premium is apportionable and there is a total failure of any apportionable part of the consideration, a proportionable part of the premium is, under the same conditions, returnable to the insured.

2524. Where the policy is null or is cancelled by the insurer before the commencement of the risk, the premium is returnable provided there has been no fraud or illegality on the part of the insured; but if the risk is not apportionable, and has once attached, the premium is not returnable.

2525. Where the insured property, or part thereof, has never been imperilled, the premium, or a proportionate part thereof is returnable.

Where the property has been insured "lost or not lost" and has arrived in safety at the time when the contract is concluded, the premium is not returnable unless, at such time, the insurer knew of the safe arrival.

2526. Where the insured has no insurable interest throughout the currency of the risk, the premium is returnable, provided the contract was not effected by way of gaming or wagering.

Where the insured has an interest subject to annulment which is terminated during the currency of the risk, the premium is not returnable.

2527. Where the insured has over-insured under an unvalued contract, a proportionate part of the premium is returnable.

The same applies in the case of over-insurance resulting from several contracts, if effected without the knowledge of the insured. But if the contracts have become effective at different times, and any of the contracts has, at any time, borne the entire risk or if a claim has been paid by the insurer in respect of the full sum insured thereby, no premium is returnable in respect of that contract.

2528. The broker has a right of retention upon the policy for the amount of the premium and his charges in respect of effecting the policy.

Where the broker has dealt with a person as if that person were a principal, he also has a right of retention upon the policy in respect of any balance on any insurance account which may be due to him from such person, unless, when the debt was incurred, he had reason to believe that such person was only acting on behalf of another.

2529. Where a policy effected by a broker acknowledges the receipt of the premium, the acknowledgement is, in the absence of fraud, conclusive as between the insurer and the insured, but not as between the insurer and the broker.

§ 6.—*Disclosure and representations*

2530. A contract of marine insurance is a contract based upon the utmost good faith.

If the utmost good faith is not observed by either party, the other party may bring an action for the annulment of the contract.

2531. The insured must disclose to the insurer, before the formation of the contract, all circumstances known to him and which would materially influence an insurer in fixing the premium, appreciating the risk or determining whether he will take it; every representation made by the insured must be true.

Circumstances requiring disclosure include any communication made to or information received by the insured.

2532. In the absence of inquiry, the insured need not disclose circumstances which diminish the risk and circumstances which it is superfluous to disclose by reason of an express or implied warranty.

Similarly, the insured need not disclose matters of common notoriety or circumstances which are known to the insurer or as to which information is waived by the insurer.

2533. A representation as to a matter of fact is deemed true if the difference between what is represented and what is actually correct would not materially influence the judgment of an insurer.

A representation as to a matter of expectation or belief is deemed true if it is made in good faith.

2534. Where insurance is effected for an insured by a person acting on behalf of the insured, that person is subject to the same obligations as the insured with respect to representations and disclosures.

The person acting on behalf of the insured cannot be held responsible for the non-disclosure of circumstances which come to the knowledge of the insured too late to be communicated to him.

2535. The insured and the insurer as well as persons acting on their behalf are deemed to know every circumstance which, in the ordinary course of business, they ought to know.

2536. A representation may be withdrawn or corrected before the formation of the contract.

2537. If the insured fails to make a disclosure or if a representation made by him is untrue, the insurer may apply for annulment of the contract, even with respect to losses or damage not connected with the risks misrepresented or not disclosed.

§ 7.—*Warranties*

2538. A warranty is an undertaking by the insured whereby he affirms or negatives the existence of a particular state of facts or promises that some particular thing will or will not be done or that some condition will be fulfilled.

The affirmation or negation of a particular state of facts necessarily implies that such state of facts will not vary.

2539. A warranty must be exactly complied with whether or not it may materially influence the judgment of an insurer.

Where a warranty is not complied with, the insurer is discharged from liability as from the date of the breach of warranty with respect to any loss which occurs subsequently; the insured cannot avail himself of the defence that the breach has been remedied, and the warranty complied with, before the loss.

2540. The insured is not required to comply with a warranty which has become unlawful or which has ceased, by reason of a change of circumstances, to be applicable to the circumstances of the contract.

2541. A warranty may be express or implied. An express warranty may be in any form of words but must be written in the policy or contained in a document incorporated into the policy by way of a rider.

An express warranty does not exclude an implied warranty, unless it is inconsistent therewith.

2542. Where insurable property, whether ship or goods, is expressly warranted neutral, there is an implied warranty that the property will have a neutral character at the commencement of the risk and that, so far as the insured can control the matter, its neutral character will be preserved during the risk.

Where a ship is expressly warranted "neutral" there is also an implied warranty that, so far as the insured can control the matter, she will carry the necessary papers to establish her neutrality and that she will not falsify or suppress her papers or use simulated papers. If any loss occurs through breach of this implied warranty, the insurer may bring an action for the annulment of the contract.

2543. There is no implied warranty as to the nationality of a ship, or that her nationality will not be changed during the risk.

2544. Where the insured property is warranted well or in good safety on a particular day, it is sufficient if it be safe at any time during that day.

2545. In a voyage policy, there is an implied warranty that at the commencement of the voyage the ship will be seaworthy for the purpose of the particular adventure insured.

Where the risk attaches while the ship is in port, there is also an implied warranty that, at the commencement of the risk, she will be fit to encounter the ordinary perils of the port; where the different stages of a voyage require different kinds of or further preparation or equipment for the ship, there is an implied warranty that the ship will be seaworthy at the commencement of each stage.

2546. In a time policy there is no implied warranty that the ship is seaworthy.

Where, with the knowledge of the insured, the ship is sent to sea in an unseaworthy state, the insurer is not liable for any loss attributable to such unseaworthiness.

2547. A ship is deemed to be seaworthy when she is fit in all respects to encounter the ordinary perils of the seas of the adventure insured.

2548. In a contract of insurance on goods or other movables, there is no implied warranty that the goods or movables are seaworthy.

In a voyage policy there is an implied warranty that, at the commencement of the voyage, the ship is seaworthy and that she is fit to carry the goods to the destination contemplated.

2549. There is an implied warranty that the adventure insured is not unlawful and that, so far as the insured can control the matter, the adventure will be carried out in a lawful manner.

§ 8.—*The voyage*

I — Commencement

2550. In a voyage contract there is an implied condition that if, when the contract is made the ship is not at the place of departure specified therein, the adventure will nevertheless commence within a reasonable time.

If the adventure is not so commenced, the insurer may apply for the annulment of the contract unless the insured shows that the delay was caused by circumstances known to the insurer before the contract was made.

2551. Where the ship sails from a place other than the place of departure specified in the contract the risk does not attach.

The same applies where the ship sails for a destination other than that specified in the contract.

II — Change of voyage

2552. There is a change of voyage from such time as, after the commencement of the risk, the determination to voluntarily change the destination specified in the contract is manifested.

The insurer is discharged from liability from the time of the change whether or not the course has in fact been changed when the loss occurs.

III — Deviation

2553. There is a deviation where the ship departs in fact from the course specified in the contract or, if none is specified, where the usual and customary course is departed from.

The insurer is discharged from liability from the time of a deviation without lawful excuse, whether or not the ship has regained her route before any loss occurs.

2554. Where several places of discharge are specified in the contract, the ship may proceed to all or any of them.

In the absence of any usage or sufficient cause to the contrary, the ship must proceed to such of the places as she goes to in the order specified in the contract; if she does not, there is a deviation.

2555. Where several places of discharge within a given area are referred to in the contract in general terms but are not named, the ship must, in the absence of any usage or sufficient cause to the contrary, proceed to such of them as she goes to in their geographical order; if she does not, there is a deviation.

IV — Delay

2556. In the case of a voyage contract, the adventure must be prosecuted with dispatch and, if without lawful excuse it is not so prosecuted, the insurer is discharged from liability from the time when the lack of dispatch becomes manifest.

V — Excuses for deviation or delay

2557. Deviation or delay in prosecuting the voyage is excused where authorized by the contract or necessary in order to comply with an express or implied warranty or where caused by circumstances beyond the control of the master and his employer or necessary for the safety of the insured property.

Deviation or delay is also excused where it occurs for the purpose of saving human life or aiding a ship in distress where human life may be in danger or where necessary for the purpose of obtaining medical or surgical aid for any person on board the ship, or where caused by the barratrous conduct of the master or crew, provided barratry is one of the perils insured against.

2558. When the cause excusing the deviation or delay ceases to operate, the ship must resume her course, and prosecute her voyage with reasonable dispatch.

2559. Where, by the occurrence of an event insured against, the voyage is interrupted at an intermediate place under such circumstances as, apart from any special stipulation in the contract of affreightment, to justify the master in landing and reshipping the goods or other movables, or in transhipping them, and sending them on to their destination, the liability of the insurer continues.

§ 9.—*Notice of loss*

2560. The notice of loss is governed by the rules applicable in non-marine damage insurance.

2561. The insurer is liable only for losses directly caused by a peril insured against.

The insurer is not liable for any such loss caused by the wilful misconduct of the insured, but he is liable if it is caused by the misconduct of the master or crew.

2562. The insurer on ship or goods is not liable for any loss directly caused by delay, although the delay may be attributable to the occurrence of an event insured against.

The insurer is not liable for any injury to machinery not directly caused by maritime perils nor for any loss directly caused by rats or vermin, nor for ordinary wear and tear, leakage and breakage during a voyage, or inherent defect or nature of the insured property.

2563. A loss may be either total or partial.

A total loss may be either an actual total loss or a constructive total loss.

Only a loss contemplated by this subsection may be considered a total loss.

2564. Unless a different intention appears from the terms of the policy, an insurance against total loss includes a constructive total loss as well as an actual total loss.

2565. There is an actual total loss where the insured is irretrievably deprived of the insured property or where it is destroyed or so damaged as to cease to be a thing of the kind insured. An actual total loss may be presumed where the ship is missing and no news of her has been received for a reasonable period of time.

2566. There is a constructive total loss where the insured property is abandoned on account of its actual total loss appearing to be unavoidable, or because it could not be preserved from actual total loss without an expenditure which would exceed the value of the insured property.

There is also a constructive total loss where the insured is deprived of the possession of the insured property by a peril insured

against and it is either unlikely that he can recover it, or too costly to attempt to do so; there is also constructive total loss where repairing the damage to the insured property would be too costly.

2567. Recovery or repair is presumed to be too costly where the cost would exceed the value of the insured property at the time the expense was incurred or where the cost of repairing the damage and forwarding the goods to their destination would exceed their value on arrival or where the cost of repairing the damage to the ship would exceed the value of the ship when repaired.

2568. In estimating the cost of repairs, no deduction is to be made in respect of general average contributions to those repairs payable by other interests.

However, account is to be taken of the expense of future salvage operations and of any future general average contributions to which the ship would be liable if repaired.

2569. Where there is a constructive total loss, the insured may either treat the loss as a partial loss, or abandon the insured property to the insurer and treat the loss as if it were an actual total loss.

2570. Where the insured brings an action for a total loss and the evidence proves only a partial loss, he may nevertheless recover for a partial loss, unless partial losses are not covered by the contract.

2571. Where goods that have reached their destination are incapable of identification by reason of obliteration of marks or otherwise, the insured has a right of action for partial loss only.

§ 10.—*Abandonment*

2572. Where the insured elects to abandon the insured property, he must give notice of abandonment, except in the case of total actual loss. If he fails to do so, he has a right of action for partial loss only.

2573. There are no special requirements as to the form or substance of the notice of abandonment but the intention of the insured to effect unconditional abandonment must be manifest.

2574. Notice of abandonment must be given with diligence after the receipt of reliable information of the loss.

Where the information is of a doubtful character the insured is entitled to a reasonable time to make inquiry.

2575. Notice of abandonment is unnecessary if, at the time the insured receives information of the loss, there would be no possibility of benefit to the insurer if notice were given to him.

2576. The insurer need not give notice of the abandonment to his reinsurer.

2577. The insurer may either accept or refuse an abandonment validly tendered. He may also waive notice of abandonment.

The acceptance of an abandonment may be either express or implied from the conduct of the insurer, but the mere silence of the insurer is not an acceptance.

2578. The acceptance of the notice admits sufficiency of the notice, renders the abandonment irrevocable and conclusively admits the insurer's liability for the insured's loss.

2579. Where the insurer accepts the abandonment, he becomes, from the time of the loss, the owner of the interest of the insured in whatever may remain of the insured property and all rights and obligations incidental thereto.

An insurer who has accepted the abandonment of a ship is entitled to any freight earned after the loss, less the expenses of earning it incurred after the loss. And, where the ship is carrying the ship owner's goods, the insurer is entitled to a reasonable remuneration for the carriage of them subsequent to the loss.

2580. Where the notice of abandonment is properly given, the rights of the insured, particularly the right of recovery for a constructive total loss, are not prejudiced by the fact that the insurer refuses to accept the abandonment.

The insured retains his interest in whatever may remain of the insured property and all incidental rights and obligations, even if the insurer indemnifies him for the loss or damage which gave rise to the abandonment.

§ 11.—*Kinds of average losses*

2581. A particular average loss is a partial loss of the insured property, caused by a peril insured against, and which is not a general average loss.

2582. Expenses incurred by or on behalf of the insured for the preservation or safety of the insured property, other than general average and salvage charges, are called particular charges.

Particular charges are not included in particular average.

2583. Salvage charges incurred in preventing a loss by perils insured against may be recovered as a loss by those perils.

"Salvage charges" means the charges recoverable under maritime law by a salvor independently of contract. They do not include the expenses of services in the nature of salvage rendered by the insured or by persons acting on his behalf, or any person employed for hire by them, for the sole purpose of averting a peril insured against, unless such expenses are properly incurred, in which case they may be recovered as particular charges or as a general average loss, according to the circumstances in which they were incurred.

2584. A general average loss is a loss caused by a general average act.

There is a general average act where any extraordinary sacrifice or expense is intentionally and reasonably made or incurred in time of peril for the purpose of preserving the property imperilled.

2585. Where there is a general average loss, the party on whom it falls is entitled, subject to the conditions imposed by maritime law, to a rateable contribution from other interested persons, and such contribution is called a general average contribution.

2586. Where the insured has incurred a general average expenditure, he may recover from the insurer in respect of the proportion of the loss which falls upon him, if any; in the case of a general average sacrifice, he may recover from the insurer in respect of the whole loss without having enforced his right of contribution from the other parties.

2587. The insurer is not liable for any general average loss or contribution where the loss was not incurred for the purpose of avoiding, or in connection with the avoidance of, a peril insured against.

2588. Where the ship, freight, and cargo, or other movable property, or any two of them, are owned by the same insured, the liability of the insurer in respect of general average losses or contributions is to be determined as if those properties were owned by different persons.

§ 12.—*Measure of indemnity*

2589. The measure of indemnity is the sum recoverable, to the full extent of the insurable value in the case of an unvalued policy or, in the case of a valued policy, to the full extent of the value fixed in the policy.

2590. Where there is a loss recoverable under the contract, the insurer, or each insurer if there are more than one, is liable for such proportion of the measure of indemnity as the amount of his subscription bears to the value fixed in the policy in the case of a valued policy, or to the insurable value in the case of an unvalued policy.

2591. The measure of indemnity for a total loss is the sum fixed in the contract in the case of a valued policy, or the insurable value of the insured property in the case of an unvalued policy.

2592. Where freight is lost, the measure of indemnity is such proportion of the sum fixed in the policy, in the case of a valued policy, or of the insurable value, in the case of an unvalued policy, as the proportion of freight lost bears to the whole insured freight.

2593. Where a ship is damaged, but is not totally lost, the measure of indemnity is as follows:

(1) Where the ship has been repaired, the insured is entitled to the reasonable cost of the repairs, less the customary deductions, but not exceeding the sum insured in respect of any one casualty;

(2) Where the ship has been only partially repaired, the insured is entitled to the reasonable cost of such repairs computed as in paragraph 1, and also to be indemnified for the reasonable depreciation arising from the unrepaired damage, provided that the aggregate amount does not exceed the cost of repairing the whole damage;

(3) Where the ship has not been repaired, and has not been sold in her damaged state during the risk, the insured is entitled to be indemnified for the reasonable depreciation arising from the unrepaired damage, but not exceeding the reasonable cost of repairing such damage, computed as in paragraph 1.

2594. Where part of the goods or other movable property insured by a valued contract is totally lost, the measure of indemnity is such proportion of the sum fixed in the contract as the insurable value of the part lost bears to the insurable value of the whole, ascertained as in the case of an unvalued contract.

Where part of the property insured by an unvalued contract is totally lost, the measure of indemnity is the insurable value of the part lost, ascertained as in case of total loss.

2595. Where the whole or any part of the goods or other movable property insured has been delivered damaged at its destination, the measure of indemnity is such proportion of the sum fixed or, as the case may be, of the insurable value, as the difference between the gross sound and damaged values bears to the gross sound value.

"Gross value" means the wholesale price at destination or, if there is no such price, the estimated value of the property with, in either case, freight, landing charges and duty paid beforehand or, in the case of goods customarily sold in bond, the bonded price.

2596. Where different species of property are insured under a single valuation, the valuation must be apportioned over the different species in proportion to their respective insurable values; similarly, the insured value of any part of a species is such proportion of the total insured value of that species as the insurable value of the part bears to the insurable value of the whole.

Where the valuation of the insured value of different species of goods has to be apportioned, and particulars of the invoice value, quality, or description of each separate species cannot be ascertained, the division of the valuation may be made over the net arrived sound values of the goods.

2597. Where the insured has paid, or is liable for, any general average contribution, the measure of indemnity is the full amount of such contribution if the property is insured for its full contributory value; if the property is not insured for its full contributory value or if only part of it is insured, the indemnity is reduced in proportion to the under-insurance.

The amount awarded as compensation for damage suffered by the insured by reason of a particular average loss which constitutes a deduction from the contributory value, and for which the insurer is liable, must be deducted from the insured value in order to ascertain what the insurer is liable to contribute.

The extent of the insurer's liability for salvage charges must be determined on the same principle.

2598. The measure of indemnity payable under a civil liability insurance contract is the amount paid or payable to third persons, up to the amount of insurance.

2599. Where the loss sustained is not expressly provided for in this subsection, the measure of indemnity is ascertained, as nearly as may be, in accordance with this subsection.

2600. Where the insured property is warranted free from particular average, the insured cannot recover for a loss of part of the insured property other than a loss incurred by a general average sacrifice, unless the contract is apportionable.

If the contract is apportionable, the insured may recover for a total loss of any apportionable part of the insured property.

2601. Where the insured property is warranted free from particular average, either wholly or under a certain percentage, the insurer is nevertheless liable for salvage charges, and for particular charges and other expenses properly incurred pursuant to the provisions of the suing and labouring clause in order to avert a loss insured against.

A general average loss cannot be added to a particular average loss to make up the percentage stipulated in the contract. Likewise, no regard shall be had to particular charges and the expenses of and incidental to ascertaining the loss.

2602. Subject to the provisions of this subsection, the insurer is liable for successive losses, even though the total amount of such losses may exceed the sum insured.

Where, under the same policy, a partial loss which has not been repaired or otherwise made good is followed by a total loss, the insured can only recover in respect of the total loss.

The liability of the insurer under the suing and labouring clause is not affected.

2603. A suing and labouring clause is deemed to be supplementary to the contract of insurance; the insured may recover from the insurer any expenses properly incurred pursuant to the clause, notwithstanding that the insurer may have paid for a total loss, or that the property may have been warranted free from particular average, either wholly or under a certain percentage.

General average losses and contributions, salvage charges, and expenses incurred for the purpose of averting or diminishing any loss not covered by the contract are not recoverable under the suing and labouring clause.

2604. It is the duty of the insured and of persons acting on his behalf, in all cases, to take measures for the purpose of averting or minimizing a loss.

§ 13.—*Miscellaneous provisions*

I — Subrogation

2605. Where the insurer pays for a total loss, either of the whole, or, in the case of goods, of any apportionable part of the insured property, he becomes entitled to take over the interest of the insured in whatever may remain of the property so paid for and he is thereby subrogated to all the rights and remedies of the insured in and in respect of the insured property from the time of the event causing the loss.

Subject to the foregoing provisions, where the insurer pays for a particular average loss, he acquires no right to the insured property, or to any part of it that may remain, but he is thereupon subrogated to all rights and remedies of the insured in or in respect of the property from the time of the event causing the loss, up to the indemnity paid.

II — Double insurance

2606. Where two or more insurance policies are effected by or on behalf of the insured on the same adventure and interest or any part thereof and the sums insured exceed the indemnity recoverable, the insured is said to be over-insured by double insurance.

2607. Where the insured is over-insured by double insurance, he may claim payment from the insurers in such order as he may think fit, but in no case is he entitled to receive any sum in excess of the indemnity recoverable.

2608. Where the contract under which the insured claims is a valued policy, the insured must give credit as against the valuation for any sum received by him under any other policy without regard to the actual value of the insured property.

Where the contract under which the insured claims is an unvalued policy, the insured must give credit, as against the full insurable value, for any sum received by him under any other policy.

2609. Where the insured receives any sum in excess of the indemnity recoverable, he is deemed to hold such sum on behalf of the insurers according to their right of contribution among themselves.

2610. Where the insured is over-insured by double insurance, each insurer is bound, as between himself and the other insurers, to contribute to the loss rateably to the amount for which he is liable under his contract.

If any insurer pays more than his proportion of the loss, he is entitled to recover the excess from the other insurers in the same manner as a surety who has paid more than his proportion of the debt.

III — Under-insurance

2611. Where the insured is insured for an amount less than the insurable value or, in the case of a valued policy, for an amount less than the policy valuation, the insured is deemed to be his own insurer in respect of the uninsured balance.

IV — Mutual insurance

2612. Where two or more persons mutually agree to insure each other against marine losses there is said to be a mutual insurance.

Mutual insurance is governed by the provisions of this section except those relating to the premium but such arrangement as may be agreed upon may be substituted for the premium.

V — Direct action

2613. In liability insurance, the amount of insurance is affected exclusively to the payment of third persons injured by the insured. Injured third persons may enforce their rights directly against the insurer or the insured. The option chosen by an injured third person does not entail renunciation of his other recourses.

CHAPTER XVI

GAMING AND WAGERING

2614. Gaming and wagering contracts are valid in the cases expressly authorized by law.

They are also valid where related to lawful activities and games requiring only skill or bodily exercises on the part of the parties,

unless the amount at stake is immoderate according to the circumstances and in view of the condition and means of the parties.

2615. Where gaming and wagering contracts are not expressly authorized by law, the winning party cannot exact payment of the debt and the losing party cannot recover the sum paid.

Notwithstanding the foregoing, the losing party may recover the sum paid in cases of fraud or trickery or where the losing party is a minor or a person of full age under protection or not endowed with reason.

In other cases, the court may also allow recovery of a part of the sum paid if it is of the opinion that the commitment is immoderate in view of the condition and means of the losing party.

CHAPTER XVII

TRANSACTION

2616. Transaction is a contract by which the parties prevent a future contestation, put an end to a lawsuit or settle difficulties arising in the execution of a judgment, by way of mutual concessions or reservations.

A transaction is indivisible as to its object.

2617. No transaction may be made with respect to the status or capacity of persons or to other matters of public order.

2618. Transaction has, between the parties, the authority of a judgment having become *res judicata.*

Transaction may be subject to compulsory execution only after homologation.

2619. Error of law is not a cause for annulling a compromise. Apart from such exception, a transaction may be annulled for the same causes as contracts in general.

2620. A transaction based on a title that is null is also null, unless the parties have expressly referred to and covered the nullity.

A transaction based on writings later found to be false is also null.

2621. A transaction based on a lawsuit is null if either party was unaware that the litigation had been terminated by a judgment having become *res judicata*.

2622. Where the parties have made a transaction on all matters between them, the subsequent discovery of documents of which they were unaware at the time of the transaction does not constitute a cause for annulling the transaction, unless the documents were withheld by one of the parties or, to his knowledge, by a third person.

Notwithstanding the foregoing, the transaction is null if it relates to only one object and if the documents later discovered prove that one of the parties had no rights in it.

CHAPTER XVIII

ARBITRATION AGREEMENTS

2623. An arbitration agreement is a contract by which the parties undertake to submit a present or future dispute to the decision of one or more arbitrators, to the exclusion of the courts.

2624. Disputes over the status and capacity of persons, family matters or other questions of public order cannot be submitted to arbitration.

An arbitration agreement cannot be opposed on the ground that the rules applicable to settlement of the dispute are in the nature of rules of public order.

2625. An arbitration agreement must be evidenced in writing; it is deemed to be evidenced in writing if it is contained in an exchange of communications which attest to its existence or in an exchange of proceedings in which its existence is alleged by one party and is not contested by the other party.

2626. A stipulation which places one party in a privileged position with respect to the designation of the arbitrators is null.

2627. An arbitration agreement contained in a contract is considered to be an agreement separate from the other clauses of the contract and the ascertainment by the arbitrators that the contract is null does not entail the nullity of the arbitration agreement.

2628. Subject to the peremptory provisions of law, the procedure of arbitration is governed by the contract or, failing that, by the Code of Civil Procedure.

BOOK SIX

PREFERENCE AND HYPOTHEC

TITLE ONE

COMMON PLEDGE OF CREDITORS

2629. The property of a debtor is charged with the performance of his obligations and is the common pledge of his creditors.

2630. Any person under a personal obligation charges, for its performance, all his property, movable and immovable, present and future, except property which is exempt from seizure or property which is the object of a division authorized by law.

2631. A debtor may agree with his creditor to bind himself in respect of certain property only. In such a case he is bound to fulfil his obligation only from the property they designate.

2632. The furniture of the debtor which adorns his main residence, used by and necessary for the life of the household, may be exempt from seizure to the extent fixed by the Code of Civil Procedure, as may instruments of work needed for the personal exercise of a professional activity, except where such movable property is charged with a hypothec.

2633. A stipulation of unseizability is null, unless it is made in an act by gratuitous title and is temporary and justified by a serious and legitimate interest. Nevertheless, the property shall remain liable to seizure to the extent provided in the Code of Civil Procedure.

2634. Creditors may seize the property of their debtor and cause it to be sold.

If the creditors rank equally, the price is distributed proportionately to their claims, unless some of them have a legal cause of preference.

2635. Preferred claims and hypothecs are the legal causes of preference.

TITLE TWO

PREFERRED CLAIMS

2636. A claim to which the law attaches the right of the creditor to be preferred over the other creditors, even the hypothecary creditors, is a preferred claim.

Preferred claims are indivisible.

2637. The following claims are preferred claims and, notwithstanding any agreement to the contrary, they are in all cases collocated in the order here set out:

(1) Legal costs and all expenses incurred in the common interest;

(2) The claims of persons having the right to retain property, provided that the right subsists;

(3) Claims of the state for amounts due under fiscal laws;

(4) Claims of municipalities and school boards for property taxes on taxable immovables.

2638. Preferred claims covering legal costs, expenses incurred in the common interest, and expenses of the state may be charged on movable or immovable property.

2639. A creditor holding a movable hypothec who has registered a prior notice of his intention to exercise his hypothecary rights or who takes procedures in execution, may apply to the state to declare the amount of its preferred claim for sums due under fiscal laws. The application must be registered and proof of notification must be filed in the registry office.

Where notification is given, the claim of the state for such amount is a preferred claim only up to the amount declared and entered in the register of real movable rights within thirty days following the notification.

2640. The claims of those having a right to retain an immovable are preferred only for reimbursement of disbursements made by them or by any person from whom they derive their claim who is not personally bound to pay the debt, where an action for surrender is brought against them.

2641. Preferred claims may be set up against other creditors and third persons without being published.

2642. Preferred claims rank, according to their order among themselves, and without regard to their date, before movable or immovable hypothecs.

Preferred claims of the same rank come in proportion to the amount of each claim.

However, preferred claims of the state in respect of immovable property for sums due under fiscal laws rank before a hypothec only where they were registered before it. Nevertheless, such preference avails only against ordinary creditors.

2643. In a case of distribution or collocation among several preferred or hypothecary creditors, the creditor of an indeterminate, unliquidated or conditional claim is collocated according to his order of preference, but subject to the conditions prescribed in the Code of Civil Procedure.

In the same way, the creditor of a term claim which becomes exigible upon the sale of property charged with a preferred or hypothecary claim is collocated according to his order of preference.

TITLE THREE

HYPOTHECS

CHAPTER I

GENERAL

SECTION I

NATURE OF HYPOTHECS

2644. A hypothec is a real right over a movable or immovable property charged with the performance of an obligation. It confers on the creditor the right to follow the property into whosever hands it may be, to take possession of it or to take it in payment, or to sell it or cause it to be sold and, in that case, to have a preferred claim to the proceeds of the sale ranking as determined in this Code.

2645. A hypothec is merely an accessory right, and subsists only as long as the obligation whose performance it secures continues to exist.

2646. A hypothec is indivisible and subsists in its entirety over all the charged properties, over each of them and over every part of them, even where the property or obligation is divisible.

2647. The hypothecary rights conferred by a hypothec can be set up against third persons only when the hypothec is published in accordance with this Book or the Book on Publication of Rights.

SECTION II

KINDS OF HYPOTHEC

2648. Hypothecation can take place only on the conditions and according to the formalities authorized by law.

A hypothec may be conventional or legal.

2649. A hypothec is movable or immovable depending on whether the object charged is movable or immovable property or a universality of movable or immovable property.

A movable hypothec may be created with or without delivery of the movable hypothecated. Where it is created with delivery, it may also be called a pledge.

2650. A conventional floating hypothec may affect both movable and immovable property at the same time.

SECTION III

OBJECT AND EXTENT OF HYPOTHECS

2651. A hypothec is a charge on one or several specific corporeal or incorporeal properties, or on all the properties included in a universality.

2652. A hypothec secures the principal, the interest accrued thereon and the legitimate costs incurred for recovering or conserving the charged property.

2653. Property exempt from seizure, and the seizable part of support, salaries or other remuneration paid under contract of employment, are not subject to hypothecation.

The same rule applies to property which may be rendered exempt from seizure, except in the case of hypothecation for the payment of

amounts owed to the seller of property or to the person who lent for the purpose of buying or repairing it. Movable property of great value is exempt from this rule.

2654. A hypothec granted on the bare ownership extends to the full ownership upon extinction of the usufruct. The same rule applies in the case of a hypothec granted by the owner of a property under emphyteutic or co-emphyteutic lease.

2655. A hypothec on the property of another or on future property begins to affect it only when the grantor acquires title to the hypothecated right.

2656. A hypothec extends to everything united to or incorporated with the property.

2657. A hypothec subsists on the new movable resulting from the transformation of property charged with a hypothec and extends to property resulting from the mixture or combination of several movables of which some are so charged. A person acquiring ownership of the new property, particularly through application of the rules on movable accession, is bound by such hypothecs.

2658. A hypothec on a universality of properties or on individual properties intended for sale subsists even after one of them is alienated, and it extends to any property acquired in replacement.

If the property was alienated in the ordinary course of business of an entreprise and not replaced by new property, the hypothec subsists but extends only to the proceeds of the alienation, provided they can be identified.

2659. A hypothec on a universality of property subsists notwithstanding the loss of the hypothecated property where the debtor replaces it in a reasonable time, having regard to the quantity and nature of the property.

2660. A hypothec on a universality of claims does not extend to the new debts of the person granting the hypothec when such debts result from the sale of his other property by a third person exercising his rights.

Nor does it extend to a claim under an insurance contract on the other property of the grantor.

2661. A hypothec on shares of the capital stock of a legal person subsists on the shares or other securities received or issued on the

purchase, redemption, conversion or cancellation or any other transformation of the hypothecated shares.

The creditor cannot object to the transformation on the ground of his hypothec but, if he holds the shares, the hypothec gives him authority to proceed with the formalities required to complete the transaction.

2662. Where what is owed to the creditor is the object of a real tender or deposit in accordance with this Code, the court may, following an application by the debtor making the tender or deposit, authorize the extension of the hypothec, which then subsists on the property tendered or deposited, and it may allow the amount initially registered to be reduced.

Once the reduction of the initial amount is entered in the appropriate register, the debtor is no longer entitled to withdraw his offers or the property deposited.

2663. A hypothec on an undivided share of a property subsists if the grantor or his successor preserves rights over some part of the property by partition or other declaratory act of ownership, subject to the Book on Successions.

If the grantor does not preserve any rights over the property, the hypothec nevertheless subsists and extends, according to its rank, to the price of transfer payable to the grantor, to the payment resulting from the exercise of a right of redemption or a stipulation of preference, or to the balance payable to the grantor.

2664. Where several hypothecs on separate properties extend to sums of money, the rights of the hypothecary creditors over those sums are concurrent and proportional to the value of their claims.

CHAPTER II

CONVENTIONAL HYPOTHECS

SECTION I

GRANTOR OF HYPOTHEC

2665. Only a person having the capacity to alienate a property may grant a conventional hypothec on it.

The debtor of the obligation secured or a third person may grant a conventional hypothec.

2666. A person whose right in a property is conditional or open to an attack in nullity can only grant a hypothec subject to the same condition or nullity.

2667. Only a person carrying on an enterprise may, whether the enterprise deals in property or in services and whether or not is commercial, grant a hypothec on a universality of property, movable or immovable, present or future, corporeal or incorporeal.

The person may thus hypothecate animals, tools or equipment pertaining to the enterprise, claims and customer accounts, patents and trademarks, or corporeal movables included in the assets of any of his enterprises kept for sale, lease or processing in the manufacture or transformation of property intended for sale, for lease or for use in providing a service.

2668. Only a person carrying on an enterprise may grant a hypothec on a corporeal movable represented by a bill of lading or other negotiable instrument.

2669. Only a trustee or a person carrying on an enterprise may grant a floating hypothec on the property of the trust patrimony or of the enterprise.

2670. No person may hypothecate any right arising from a life insurance contract except with the consent of the persons having irrevocable rights under the contract.

SECTION II

OBLIGATIONS SECURED BY HYPOTHECS

2671. A hypothec may be granted to secure any obligation whatever.

2672. A hypothec granted to secure payment of a sum of money is valid even if, when it is granted, the debtor has not received the prestation in consideration of which he has undertaken the obligation or has received only part of it.

This rule is applicable in particular to lines of credit and the issue of bonds or other titles of indebtedness by a legal person, a limited partnership or a trustee.

2673. The constituting instrument of a hypothec must indicate the determinate sum for which it is granted.

However, it need not indicate the determinate sum where the hypothec secures payment of a life annuity or some other obligation assessable in money and stipulated in a gift.

2674. Where the hypothec is granted for an indeterminate sum, an estimated value must be expressly declared by the creditor when the hypothec is granted.

The hypothec cannot then be published in excess of the estimated value, which may be reduced upon entry of a new estimate in the proper register.

2675. The sum for which the hypothec is granted is not considered to be indeterminate where the act, rather than stipulating a fixed rate of interest, contains the necessary particulars for determining the actual rate of interest on the obligation.

2676. Where the creditor refuses to hand over the sums of money he has lent and for which he holds a hypothec as security, the debtor or the grantor may, at the expense of the creditor, cause the hypothec to be reduced or cancelled, upon payment, in the latter case, of only the amounts that may then be due.

2677. A hypothec securing payment of bonds or other titles of indebtedness issued by a trustee, a limited partnership or a legal person authorized to do so by law must, on pain of absolute nullity, be granted by notarial deed *en minute* in favour of the attorney of the creditors.

SECTION III

IMMOVABLE HYPOTHECS

2678. An immovable hypothec must, on pain of absolute nullity, be granted by notarial deed *en minute*.

2679. An immovable hypothec is valid only so far as the constituting instrument specifically designates the hypothecated property.

2680. The parties may agree that the hypothec of an immovable includes hypothecation of the present and future rents produced by it and the indemnities paid under the insurance contracts covering the immovable or rents.

In addition to being published in the land register, any such hypothec must be published in the register of real movable rights.

SECTION IV

MOVABLE HYPOTHECS

§ 1.—*Movable hypothecs without delivery*

2681. A movable hypothec without delivery must, on pain of absolute nullity, be granted in writing.

2682. The constituting instrument of a movable hypothec must contain a sufficient description of the hypothecated property.

2683. A movable hypothec charging the fruits and products of the soil, and the materials and other things forming an integral part of an immovable, takes effect when they become movables with a separate existence, provided that the hypothec has previously been registered against the immovable. It ranks only from its date of registration in the register of real movable rights.

2684. Where movable property is alienated otherwise than as part of the activities of an enterprise, a creditor who has registered his hypothec preserves his right to follow it by filing a notice of preservation of hypothec in the register of real movable rights, under the name of the purchaser.

The notice must be registered within fifteen days after the creditor is informed in writing of the transfer of the property and the name of the purchaser, or after he consents in writing to the transfer. The creditor shall transmit a copy of the notice to the purchaser within the same time.

The notice must indicate the name of the debtor, and of the purchaser, and contain a description of the property.

§ 2.—*Movable hypothecs with delivery*

2685. A movable hypothec with delivery is granted by delivery of the property or title to the creditor or, if the property is already in his hands, by his continuing to hold it, with the grantor's consent, to secure his claim.

2686. A movable hypothec with delivery is published by the creditor's holding the property or title, and remains so only as long as he continues to hold it.

2687. Holding is continuous even if its exercise is prevented by the act of a third person without the consent of the creditor or is

temporarily interrupted by the handing over of the property or title to the grantor or to a third person for evaluation, repair, transformation or improvement.

2688. The creditor, with the consent of the grantor, may hold the property through a third person, but if so, detention by the third person effects publication only from the time the third person receives evidence in writing of the hypothec.

2689. A creditor prevented from holding the property may revendicate it from the person holding it, unless he is prevented as a result of the exercise of hypothecary rights or a seizure in execution by another creditor.

2690. A movable hypothec granted with delivery may be published by registration at a later date, provided publication is not interrupted.

2691. A movable hypothec on corporeal property represented by a bill of lading or other negotiable instrument or on incorporeal rights may be set up against the creditors of the grantor from the time the creditor gives value even though the title has not yet been remitted to him.

However, it must, in order to subsist, be published within ten days of being granted.

2692. Where the title is negotiable by endorsement and delivery, or delivery alone, its remittance to the creditor takes place by endorsement and delivery, or by delivery alone.

§ 3.—*Movable hypothecs on claims or other incorporeal rights*

2693. A movable hypothec on a claim or an incorporeal right held by the grantor against a third person or on a universality of incorporeal rights may be granted with or without delivery.

However, in either case the creditor cannot set up his hypothec against the debtors of hypothecated rights as long as it cannot be set up against them in the same way as an assignment of claim.

2694. A hypothec on a universality of incorporeal rights, even when granted by the remittance of the title to the creditor, must be entered in the proper register.

2695. A hypothec on an incorporeal right held by the grantor against a third person must, where the right is itself secured by a

registered hypothec, be published by registration; the creditor must remit a copy of the certificate of registration to the debtor of the hypothecated right.

2696. A movable hypothec on an incorporeal right or a universality of incorporeal rights charges only the sums paid or otherwise discharged after it became possible to set up the hypothec against the debtors of the hypothecated rights.

2697. In all cases, either the creditor or the grantor may institute proceedings in recovery of a hypothecated right, provided he impleads the other.

§ 4.—*Movable hypothecs on ships, cargo or freight*

2698. A movable hypothec on a ship is effective only if at the time of publication the ship is not registered under the Canada Shipping Act or under an equivalent foreign law.

A movable hypothec may also be granted on the cargo of a registered ship or on the freight, whether or not the property is on board, but in that case it is subject to any rights over the property which other persons may have under such legislation.

SECTION V

FLOATING HYPOTHECS

2699. A hypothec is a floating hypothec when some of the effects are suspended, and it remains so until, the debtor having defaulted, the creditor provokes crystallization of the hypothec by serving a notice of default on the debtor. The hypothec then has all its effects in respect of the debtor and the grantor.

It cannot be set up against third persons except by registration of the notice of crystallization.

2700. Any condition or restriction stipulated in the constituting act in respect of the right of the grantor to alienate, hypothecate or dispose of the charged property has effect between the parties before crystallization.

2701. A floating hypothec on an incorporeal right or on a universality of incorporeal rights has effect in respect of the debtors of hypothecated rights, and may be set up against third persons, upon registration of the notice of crystallization, provided the notice has

been published in a newspaper circulated in the locality of the last known address of the debtor of the floating hypothec or, where he carries on an enterprise, in the locality where the enterprise has its principal establishment.

In addition, to have effect, the hypothec must have been published beforehand and, if immovable properties are charged, it must have been published against each of them.

2702. By crystallization, a floating hypothec has all the effects of a movable or immovable hypothec in respect of whatever rights the grantor may have at that time in the charged property; if the property includes a universality, the hypothec also charges properties acquired by the grantor after crystallization.

2703. The sale of an enterprise by the grantor cannot be set up against the holder of a floating hypothec. The same applies to a merger or reorganization of an enterprise.

2704. The creditor holding a floating hypothec on a universality of property may, from registration of the notice of crystallization, take possession of the property to administer it in preference to any other creditor having published his hypothec after the date of registration of the floating hypothec.

2705. Where there are several floating hypothecs on the same property, crystallization of one of them enables the creditors holding the others to register their own notice of crystallization at the registry office.

2706. Where the default of the debtor has been remedied, the creditor shall require the registrar to cancel the notice of crystallization.

The effects of crystallization cease with the cancellation, and the effects of the hypothec are again suspended.

CHAPTER III

LEGAL HYPOTHECS

2707. Only the following rights and claims may give rise to a legal hypothec:

(1) Claims of the state for sums due under fiscal laws, and certain other claims of the state or of legal persons of public right, under specific provision of law;

(2) Rights and claims of persons having taken part in the construction or renovation of an immovable;

(3) The claim of a vendor who has not been paid the price of property sold;

(4) The claim of a syndicate of co-owners for payment of the common expenses and contributions to the contingency fund;

(5) Rights under a judgment or a deposit before the court.

2708. The legal hypothecs of the state, including those for sums due under fiscal laws, and the hypothecs of legal persons of public right may be charged on movable or immovable property.

Such hypothecs take effect only from their registration in the proper register. Requisition of registration is made by filing a notice indicating the legislation granting the hypothec, the property of the debtor on which the creditor intends to exercise it, and stating the amount of the claim. The notice must be served on the debtor.

Registration by the state of a legal movable hypothec for sums due under fiscal laws does not prevent it from exercising its preferred claim.

2709. A legal hypothec in favour of the persons having taken part in the construction or renovation of an immovable cannot charge any other immovable. It exists only in favour of the architect, engineer, supplier of materials, workman and contractor or sub-contractor in proportion to their work on the immovable or to the materials or services supplied by them for the work.

2710. A legal hypothec in favour of persons having taken part in the construction or renovation of an immovable subsists, even if it has not been published, for thirty days after the work has been substantially carried out and is in a fit state to be used for the purpose for which it is intended.

It subsists if, before the thirty-day period expires, a notice describing the charged immovable is registered, together with a detailed statement of the claim. The notice must be served on the owner of the immovable.

It is extinguished six months after registration of the notice of preservation, unless the creditor publishes an action against the owner of the immovable to preserve the hypothec.

2711. The hypothec secures the cost of the work, materials or services supplied or prepared for the work, at the time they were supplied. However, where those in favour of whom it exists did not themselves enter into a contract with the owner, the hypothec is limited to the costs incurred after written declaration of the contract to the owner. A workman is not bound to declare his contract.

2712. The legal hypothec of a vendor may be exercised against the sold property for whatever is due to him on the price.

It takes effect upon registration of the sale.

2713. The legal hypothec of a syndicate of co-owners charges the fraction of the co-owner who has defaulted for more than thirty days on payment of his common expenses or his contribution to the contingency fund, and has effect only upon registration of a notice indicating the nature of the claim, the amount exigible on the day the notice is registered, and the expected amount of charges and claims for the current financial year and the next two years.

2714. Every creditor who has received a deposit before the court or in whose favour a money judgment has been rendered by a court having jurisdiction in Québec may acquire a legal hypothec on the movable or immovable property of his debtor.

He may acquire it by registering a notice describing the property charged with the hypothec and specifying the amount of the obligation, and, in the case of an annuity or support, the amount of the instalments. The notice shall be filed with a copy of the judgment and proof that it has been served on the debtor.

2715. Except in the case of the legal hypothec of the state or of a legal person of public right, the court, on application of the owner of the property charged with a legal hypothec, may determine which property the hypothec may charge, reduce the number of the properties or give leave to the applicant to substitute other security for the hypothec sufficient to secure payment; it may thereupon order the registration of the legal hypothec to be cancelled.

CHAPTER IV

CERTAIN EFFECTS OF HYPOTHECS

SECTION I

GENERAL PROVISIONS

2716. A hypothec does not divest the grantor or the person in possession, who continue to enjoy their rights over the charged property and may dispose of it, subject to the rights of the hypothecary creditor.

2717. Neither the grantor nor his successor may destroy or deteriorate the hypothecated property or materially reduce its value except by normal use or in case of necessity.

In the case of such loss, the creditor may, in addition to his other remedies, and even though his claim is neither liquid nor exigible, recover damages and interest in compensation up to the amount of his claim and with the same right of hypothec; the amount so collected is imputed upon his claim.

2718. Hypothecary creditors may institute legal proceedings to have their hypothec recognized and interrupt prescription, even though their claims are neither liquid nor exigible.

SECTION II

RIGHTS AND OBLIGATIONS OF CREDITORS IN POSSESSION OF HYPOTHECATED PROPERTY

2719. Where the creditor of a movable hypothec with delivery holds the property charged, he must do whatever is necessary to preserve it; he cannot use it without the permission of the grantor.

2720. The fruits and revenues of the hypothecated property are collected by the creditor.

Unless otherwise stipulated, the creditor must hand over the fruits collected to the grantor, and shall apply the revenues collected, first, to expenses, then to any interest owing to him, and lastly to the principal of the debt.

2721. Where shares of the capital stock of a legal person are redeemed for cash by the issuer, the creditor collecting the price shall apply it as if it were revenue.

2722. The creditor is not liable for loss of the hypothecated property by superior force or as a result of its age, perishability, or its normal and authorized use.

2723. The grantor is bound to repay to the creditor his expenses incurred for the preservation of the property.

2724. The grantor cannot recover possession of the hypothecated property until performance of his obligation, unless the creditor abuses the property.

The creditor loses his hypothec upon a judgment compelling him to return the property.

2725. An heir of the debtor who has paid his share of the debt cannot demand his share of the hypothecated property until the whole debt is paid.

An heir of the creditor cannot, on receiving his share of the debt, return the hypothecated property to the prejudice of any unpaid coheir.

SECTION III

RIGHTS AND OBLIGATIONS OF CREDITORS HOLDING HYPOTHECATED CLAIMS OR OTHER HYPOTHECATED INCORPOREAL RIGHTS

2726. A creditor holding a hypothec on an incorporeal right shall collect the revenues produced by the right, together with the principal falling due while the hypothec is in effect; he shall also give discharge for the sums he collects.

Unless otherwise stipulated, he shall apply the amounts collected to payment of the obligation, even if it is not yet exigible, according to the rules governing payment generally.

2727. The creditor may authorize the grantor to collect repayments of principal or the revenues from the hypothecated rights as they fall due.

The creditor's hypothec is extended to the amounts so collected.

2728. The creditor may at any time withdraw his authority to the grantor to collect. To do so he must serve notice on the grantor and on the debtor of the hypothecated rights that he will thenceforth collect the sums falling due himself. If the hypothec is itself registered, the withdrawal of authority must also be registered.

2729. While the hypothec is in effect, the creditor is not required to sue for recovery of principal or interest of the hypothecated rights, but he must inform the grantor within a reasonable time of any irregularity in payment of any sums exigible on the rights.

2730. The creditor must remit to the grantor any sums collected over and above the principal, interest and expenses, notwithstanding any stipulation by which the creditor may keep them on any ground whatever.

CHAPTER V

EXERCISE OF HYPOTHECARY RIGHTS

SECTION I

GENERAL PROVISION

2731. In addition to their personal right of action and the provisional measures provided in the Code of Civil Procedure, creditors have only the hypothecary rights provided in this chapter for the enforcement and realization of their security.

Thus, where their debtor is in default and their claim is liquid and exigible, they may exercise the following hypothecary rights: they may take possession of the charged property to administer it, take it in payment of their claim, have it sold by court order or sell it themselves.

SECTION II

GENERAL CONDITIONS FOR EXERCISE OF HYPOTHECARY RIGHTS

2732. Creditors cannot exercise their hypothecary rights before the period established in article 2741 for surrender of the property has expired.

2733. Earlier ranking creditors take priority over later creditors when exercising their hypothecary rights.

An earlier ranking creditor may, however, be liable for payment of expenses of a later creditor if, after being notified of the exercise of a hypothecary right by the latter, he delays unreasonably before invoking the priority of his rights.

2734. The creditor may exercise his hypothecary rights in whosever hands the property lies.

2735. Where property charged with a hypothec is under usufruct, the hypothecary rights must be exercised against the bare owner and the usufructuary simultaneously, or notified to whichever of them is not proceeded against first.

2736. A creditor whose hypothec charges more than one property may exercise his hypothecary rights simultaneously or successively against such properties as he sees fit, but only to the extent required to pay his claim.

2737. Where later ranking creditors are secured by a hypothec on only one of several properties charged in favour of one and the same creditor, his hypothec is spread among them, where two or more of the properties are sold under judicial authority and the proceeds are still to be distributed, proportionately over what remains to be distributed of their respective prices.

2738. The holder of a floating hypothec cannot exercise his hypothecary rights until after registration of notice of crystallization.

2739. The holder of a movable hypothec with delivery on shares of the capital stock of a legal person need not notify the person who issued the shares of his right, but the exercise of his hypothecary rights is, in all cases, subject to the provisions and agreements governing the transfer of the hypothecated shares.

SECTION III

PRELIMINARY MEASURES

§ 1.—*Prior notice*

2740. A creditor intending to exercise a hypothecary right must file a prior notice at the registry office, together with evidence that it has been served on the debtor and, where applicable, on the grantor and on any other person against whom he intends to exercise his right.

Registration of such a notice shall be made in accordance with the Book on Publicity of Rights.

2741. The prior notice of the exercise of a hypothecary right must set forth any failure by the debtor to fulfil his obligations and

contain a reminder, where necessary, that the debtor or a third person has a right to remedy the default. It must also indicate the amount of the claim in principal and interest, if any, and the nature of the hypothecary right which the creditor intends to exercise, provide a description of the charged property and call on the person against whom the right is to be exercised to surrender the property before the period specified in the notice expires.

This period is twenty days after registration of the notice in the case of a movable property, sixty days in the case of an immovable property, or ten days if the creditor intends to take possession of the property.

2742. A dealer in securities who, as creditor, has a hypothec on the securities he holds for his debtor may, in the ordinary course of his duties and where allowed by the regulations and usages observed where he trades and by his agreement with his debtor, sell the securities or take them in payment without giving prior notice or observing any time limits prescribed in this Title.

2743. The voluntary alienation of property charged with a hypothec, effected after the creditor has registered a prior notice of the exercise of a hypothecary right, cannot be set up against the creditor unless the acquirer, with the consent of the creditor, personally assumes the debt, or unless a sum sufficient to cover the amount of the debt, interest and costs due to the creditor is deposited.

2744. Judgment may be given against the person against whom the hypothecary right is exercised to return the fruits and revenues he has collected and to repair any damage he may have caused to the property since service of the creditor's prior notice.

§ 2.—*Rights of debtor or person against whom hypothecary right is exercised*

2745. A debtor or a person against whom a hypothecary right is exercised, or any other interested person, may defeat exercise of the right by paying the creditor the amount due to him in principal and interest or, where that is the case, by remedying the omission or breach set forth in the prior notice and any subsequent omission or breach, and, in either case, by paying the costs incurred.

The right may be exercised before the property is taken in payment or sold, or, if the right exercised is taking in possession, at any time.

2746. A creditor having given prior notice of the exercise of a hypothecary right is not entitled to demand any indemnity from the debtor except interest owing and costs.

§ 3.—*Surrender*

2747. Surrender is voluntary or forced.

2748. Surrender is voluntary where, before the period indicated in the prior notice expires, the person against whom the hypothecary right is exercised abandons the property to the creditor in order that the creditor may take possession of it.

If the hypothecary right exercised is taking in payment, voluntary surrender must be attested in writing by the person surrendering the property.

2749. Surrender is forced where the court orders it after ascertaining the existence of the claim, the debtor's default and the absence of voluntary surrender.

The judgment shall fix the period within which surrender must take place, determine the manner in which it shall be effected and designate the person in favour of whom it is carried out.

2750. If the good faith of the creditor or his aptitude to administer or ability to sell the property to which his motion of surrender applies is challenged, the court may order the creditor to furnish a surety to guarantee performance of his obligations.

2751. Surrender is also forced where the court, on a motion of the creditor, orders surrender of the property before the period indicated in the prior notice expires, where there is reason to fear that otherwise recovery of his claim may be endangered, or where the property may perish or deteriorate rapidly. In the latter cases, the creditor is authorized to exercise his hypothecary rights immediately.

The motion need not be served on the person against whom the hypothecary right is exercised, but the order must be served on him. If the order is subsequently rescinded, the creditor is bound to return the property or pay back the price of alienation.

2752. The person against whom the hypothecary right is exercised and who is not responsible for the debt becomes personally liable therefor if he fails to surrender the property within the time allotted by the judgment.

2753. Where the person against whom the hypothecary right is exercised has a preferred claim under his right to hold the property, he is bound to surrender it, subject to payment to him of his claim.

2754. The person against whom the hypothecary right is exercised and who has received the property in payment of his preferred or hypothecary claim, which is anterior to the claim contemplated in the prior notice, or who has paid the preferred or hypothecary claims anterior to his own, may surrender the property subject to the creditor's giving him security that the property will be sold at a sufficient price to ensure full payment of his anterior preferred or hypothecary claim.

2755. Real rights which the person against whom the hypothecary right is exercised had in the property when he acquired it, or that he extinguished while it was in his possession, revive after surrender.

The hypothec revives and is ranked with effect from the date of its publication, but the hypothecary creditors of the person against whom the hypothecary right is exercised are subrogated to his rights, in their order of preference among themselves.

The revival of the real right or hypothec must be registered in the proper register.

SECTION IV

TAKING POSSESSION FOR PURPOSES OF ADMINISTRATION

2756. A creditor who holds a hypothec on the property of an enterprise may temporarily take possession of the hypothecated property and administer it. He acts in such a case as administrator of the property of others entrusted with full administration.

2757. The taking of possession of a property does not affect the rights of the lessee.

2758. Taking of possession terminates under the same circumstances as administration of the property of others, and also where the creditor is satisfied with his claim in principal, interest and costs, or where he has registered a prior notice of the exercise of another hypothecary right.

2759. When possession ends, the creditor must render account of his administration and return the property in possession to the

person against whom the hypothecary right was exercised, or to his successors, at the previously agreed place or, failing that, at the place where it is.

He shall register a notice of return of property in the proper register.

2760. A creditor who has, through his administration, obtained payment of the debt, must return to the person against whom the hypothecary right was exercised, in addition to the property, any surplus remaining in his hands after payment of the debt, the expenses of administration and the costs incurred for the exercise of possession of the property.

SECTION V

TAKING IN PAYMENT

2761. Where, at the time of registration of the creditor's prior notice, the debtor has already discharged one-half or more of the obligation secured by the hypothec, the creditor must obtain leave from the court before taking property in payment, except where the debtor has voluntarily surrendered the property.

2762. Subsequent hypothecary creditors may, within the time allotted for surrender, require the creditor to abandon the taking in payment and sell the property himself, provided that they have registered a notice to that effect, reimbursed the creditor for the costs he has incurred and advanced the amounts needed for the sale of the property. The notice must be served on the creditor, the grantor and the debtor, and on the person against whom the hypothecary right is exercised.

The debtor may also, in the same manner, require the creditor to proceed with the sale or to cause the property to be sold under judicial authority.

Registration of the notice shall be made in accordance with the Book on Publicity of Rights.

2763. A creditor required to sell shall proceed to do so unless he prefers to pay the subsequent creditors who registered the notice, or, if the notice was registered by the debtor, unless the court authorizes the creditor to take the property in payment on such conditions as it may determine.

If the creditor does not act, the court may allow the person who registered the notice requiring the sale, or any other person designated by him, to proceed with it.

2764. Where the default has not been remedied or the payment has not been made in the time allotted for surrender, the creditor takes the property in payment by the effect of the judgment of surrender, or of a deed voluntarily made, if neither the subsequent creditors nor the debtor have required him to proceed with the sale.

The judgment of surrender or the deed voluntarily made constitutes the creditor's title of ownership.

2765. Taking in payment extinguishes the obligation.

2766. A creditor who has taken a property in payment becomes the owner of it from the time of registration of prior notice. He takes it as it then stood, but free of all priorities and hypothecs published after his hypothec.

With the exception of preferred claims that can be set up without being registered, other real rights created after registration of the notice cannot be set up against the creditor, whether published or not, if he did not consent to them.

SECTION VI

SALE BY CREDITOR

2767. Any hypothecary creditor having filed a prior notice at the registry office indicating his intention to sell the charged property himself may, after obtaining surrender of the property, proceed with the sale by agreement, by a call for tenders or by public auction.

2768. The creditor must sell the property without unnecessary delay, at a commercially reasonable price, and in the best interest of the person against whom the hypothecary right is exercised.

If there is more than one property, he may sell them together or separately. He may also continue to use or operate the property temporarily, to complete its processing, or to harvest standing crops or extract minerals or other products of the soil charged with the hypothec. If he does so, he is entitled to payment of his expenses.

2769. A creditor who sells the property himself acts in the name of the owner and is bound to declare his quality to the purchaser at the time of the sale.

2770. A creditor who proceeds by a call for tenders may do so through the newspapers or by invitation.

The call for tenders must contain sufficient information to enable any interested person to make an offer at the proper time and place.

The creditor is bound to accept the highest offer unless the conditions attached to it render it less advantageous than another lower offer, or unless the price offered is not commercially reasonable.

2771. A creditor who proceeds with a sale by public auction must hold it at the date, time and place fixed in the notice of sale served on the person against whom the hypothecary right is exercised and the grantor and notified to the other creditors.

He must also inform any interested person who requests such information of what he is doing.

2772. The creditor shall impute the proceeds of the sale to payment of the costs of exercising the right, payment of the claims prior to his rights, and, finally, payment of his claim.

If other creditors have rights to be claimed, the creditor who sold the property shall render account of the proceeds of the sale to the clerk of the competent court and shall remit what remains of the price after imputation; where no such creditors exist, he must, within ten days, render account of the proceeds of the sale to the owner of the property and remit any surplus to him; the rendering of account may be opposed in the manner established in the Code of Civil Procedure.

Where the proceeds of the sale are insufficient to pay his claim and costs, the creditor retains a claim against his debtor for the balance due to him.

2773. Where the property is sold to the creditor or to a person related to or in collusion with him, the debtor may be released from his debt to him under the same conditions and in the same manner as upon a court ordered sale.

2774. The purchaser takes the property subject to the real rights charging it at the time of registration of the prior notice, except the hypothec of the creditor who sold the property and the claims which ranked ahead of his rights.

Real rights created after registration of the prior notice, with the exception of preferences not requiring registration, cannot be set up

against the purchaser, even where they have been published, if he did not consent to them.

SECTION VII

SALE BY JUDICIAL AUTHORITY

2775. A sale takes place by judicial authority where the court designates the person who will proceed with it, fixes the conditions and charges of the sale, indicates whether it may be made by agreement, call for tenders or public auction and, after enquiring as to the value of the property, fixes the upset price.

2776. No creditor may require that the sale be subject to his preference or hypothec.

2777. The person entrusted with the sale of the property is bound to observe the rules prescribed in the Code of Civil Procedure for the sale of the property of another, and in addition to inform the interested parties of his proceedings if they require him to do so.

The person acts in the name of the owner and is bound to declare his quality to the purchaser.

2778. Sale by judicial authority purges the real rights to the extent provided by the Code of Civil Procedure in respect of the effect of the order.

2779. Where the charged property ordered to be sold is acquired by a creditor having a preferred or hypothecary claim thereon, the debtor is released from his debt to the creditor up to the market value of the property at the time of acquisition, less any claims ranking ahead of the acquirer's claim.

The debtor is also released where, within three years from the sale, the creditor who acquired the property receives, by resale of all or part of the property or by any other transaction in respect of it, value equal to or greater than the amount of his claim, including principal, interest and costs, the amount of the disbursements he has made on the property, with interest, and the amount of the other preferred or hypothecary claims ranking ahead of his own.

2780. The creditor is presumed to have acquired the property if it is sold to a person related to or in collusion with him, especially a relative by blood or marriage up to the second degree, a person living with him, a partner, or a legal person of which he is a director or which he controls.

2781. A debtor, on being released, is entitled to an acquittance from his creditor.

If the creditor refuses to grant the acquittance, the debtor may move that the court declare his release.

2782. Release of the principal debtor entails release of his sureties and other warrantors, who may exercise the same rights as the principal debtor, even independently of him.

TITLE FOUR

EXTINCTION OF PREFERENCES AND HYPOTHECS

2783. Preferences and hypothecs are extinguished by the loss, change of nature, exclusion from being an object of commerce or expropriation of the charged property, where such events affect the property as a whole.

However, where a movable property is incorporated in an immovable, the movable hypothec subsists notwithstanding the change of nature of the property, and is ranked according to the rules set out in the Book on Publicity of Rights.

2784. The preference granted by law to certain claims ceases by operation of law when the obligation which is its cause is extinguished.

2785. A hypothec is extinguished by the extinction of the obligation whose performance it secures. In the case of a line of credit or in any other case where the debtor obligates himself again under a provision of the deed of hypothec, the hypothec, unless cancelled, subsists notwithstanding the extinction of the obligation.

2786. A hypothec is extinguished ten years after the date of its registration or registration of a notice giving it effect or renewing it.

Pledge is extinguished upon termination of detention.

2787. The legal hypothec of a syndicate of co-owners on the fraction of a co-owner is extinguished three years after it is registered, unless the syndicate publishes an action in default against the owner to preserve it.

2788. Where a hypothecary creditor takes the hypothecated property in payment, the hypothec of the creditors ranking behind

him is not extinguished except by registration of the deed voluntarily made or of the judgment of surrender.

2789. Other causes of extinction of hypothecs are provided by law.

BOOK SEVEN

EVIDENCE

TITLE ONE

GENERAL RULES OF EVIDENCE

CHAPTER I

GENERAL PROVISIONS

2790. A person wishing to assert a right must prove the facts on which his claim is based.

A person who sets up the nullity, modification or extinction of a right invoked must prove the facts on which he bases his contestation.

2791. Evidence is sufficient if it renders the existence of a fact more probable than its non-existence, unless the law requires more convincing proof.

2792. Good faith is always presumed, unless the law expressly requires that it be proved.

CHAPTER II

JUDICIAL NOTICE

2793. No proof is required of a matter that must be judicially noticed.

2794. Judicial notice shall be taken of the law in force in Québec.

However, statutory instruments in force in Québec but not published in the *Gazette officielle du Québec*, international treaties applicable to Québec and customary international law must be pleaded.

2795. Judicial notice shall be taken of any fact that is so generally known that it cannot reasonably be questioned.

2796. Judicial notice may be taken of the law of other provinces or territories of Canada and of that of a foreign state, provided it has been pleaded. The court may nevertheless require that proof be made of such law.

Where such law has not been pleaded or its content cannot be established, the court shall apply the law in force in Québec.

2797. The court may, in any matter, take judicial notice of the facts in dispute in the presence of the parties or where the parties have been duly called. It may make any verifications it considers necessary and go to the scene, if need be.

TITLE TWO

PROOF

2798. Proof of a fact or juridical act may be made in writing, by testimony, by presumption, by admission or by the production of material things, according to the rules set forth in this Book and in the manner provided in the Code of Civil Procedure or in any other Act.

CHAPTER I

WRITINGS

SECTION I

COPIES OF STATUTES

2799. Copies of statutes which have been or are in force in Canada, attested by a competent public officer or published by an authorized publisher, make proof of the existence and content of such statutes, and neither the signature or seal appended to such a copy nor the quality of the officer or publisher need be proved.

SECTION II

AUTHENTIC ACTS

2800. An authentic act is one that has been received or attested by a competent public officer according to the laws of Québec or of Canada, with the formalities required by law.

Every act whose material appearance satisfies such requirements is presumed to be authentic.

2801. The following documents in particular are authentic if they conform to the requirements of law:

(1) Official documents of the parliament of Canada or of Québec;

(2) Official documents issued by the government of Canada or of Québec, such as letters patent, orders and proclamations;

(3) Records of the courts of justice having jurisdiction in Québec;

(4) Records of municipalities and of other legal persons of public right established by an Act of Québec;

(5) Public records required by law to be kept by public officers;

(6) Notarial acts;

(7) Reports of determination of boundaries.

2802. A copy of the original of an authentic act or, where the original is lost, a copy of an authentic copy of the act is authentic if it is attested by the public officer having custody of it.

2803. Where the original of a document entered in a register kept as required by law, and retained by the officer in charge of the register, is lost or in the possession of the adverse party or of a third person without collusion on the part of the person invoking it, the copy of the document is also authentic if it is attested by the public officer having custody of it or by the Keeper of the Archives nationales du Québec.

2804. An extract which textually reproduces part of an authentic act is itself authentic if it is certified by the person having lawful custody of the act, provided the extract bears its date of issue and indicates the date, nature and place of execution of the original act and, where such is the case, the names of the parties and of the public officer who drew it up.

2805. The recital, in an authentic act, of the facts which the public officer had the task of observing or recording makes proof against all persons.

2806. To be authentic, a notarial act must be signed by all the parties; it then makes proof against all persons of the juridical act which it sets forth and of those declarations of the parties which directly relate to the act.

Where the parties are unable to sign, their declaration or consent must be given before a witness who shall sign. Minors, persons of full age who are unable to give consent and persons who have an interest in the act cannot be witnesses.

2807. An authentic copy of a document makes proof against all persons of its conformity to the original and replaces it.

An authentic extract makes proof of its conformity to the part of the document which it reproduces.

2808. Improbation is necessary only to contradict the recital in the authentic act of the facts which the public officer had the task of observing.

Improbation is not required to rectify clerical errors or to contest the quality of the public officer or witnesses or the signature of the public officer.

SECTION III

SEMI-AUTHENTIC ACTS

2809. An act purporting to be issued by a competent foreign public officer makes proof of its content against all persons and neither the quality nor the signature of the officer need be proved.

Similarly, a copy of a document in the custody of the foreign public officer makes proof of its conformity to the original against all persons, and replaces the original if it purports to be issued by the officer.

2810. A power of attorney under private signature made outside Québec before a competent public officer who verifies the identity of the mandator, receives his signature and certifies the power of attorney also makes proof against all persons.

2811. Acts, copies and powers of attorney mentioned in this section may be deposited with a notary, who can then issue copies of them.

Such a copy makes proof of its conformity to the deposited document and replaces it.

2812. Where an act or copy issued by a foreign public officer or a power of attorney certified by a foreign public officer has been contested, the person invoking it has the burden of proving that it is authentic.

SECTION IV

PRIVATE WRITINGS

2813. A private writing is a writing setting forth a juridical act and bearing the signature of the parties; it is not subject to any other formality.

2814. A signature is the affixing by a person, on a writing, of his name or the distinctive mark which he regularly uses to signify his intention.

2815. A person who invokes a private writing has the burden of proving it.

Where a writing is set up against the person purporting to have signed it or his heirs, it is deemed to be admitted unless it is contested in the manner provided in the Code of Civil Procedure.

2816. A private writing makes proof, in respect of the persons against whom it is proved, of the juridical act which it sets forth and of the statements of the parties directly relating to the act.

2817. A private writing does not make proof of its date against third persons but that date may be established against them in any manner.

However, writings relating to acts carried out in the ordinary course of business of an enterprise are presumed to have been made on the date they bear.

SECTION V

OTHER WRITINGS

2818. An unsigned writing regularly used in the ordinary course of business of an enterprise to evidence a juridical act makes proof of its content.

A domestic paper stating that payment has been received or mentioning that it supplies the lack of a title in favour of the person for whose benefit it sets forth an obligation makes proof against the person who wrote it.

2819. A writing that is neither authentic nor semi-authentic which relates a fact may be used to establish that fact.

The writing cannot have probative force unless its authenticity has been established by separate proof.

2820. A release, although unsigned and undated, inscribed by a creditor on the title of his debt or on a copy thereof which has always remained in his possession makes proof against him.

The release is not admissible in proof of payment, however, if it has the effect of withdrawing the debt from the rules governing prescription.

2821. A person who invokes an unsigned writing must prove that it originates from the person whom he claims to be its author.

2822. Writings contemplated in this section may be contested on any grounds, and their probative force is left to the appraisal of the court.

SECTION VI

COMPUTERIZED RECORDS

2823. Where the data respecting a juridical act are entered on a computer system, the document reproducing them makes proof of the content of the act if it is intelligible and if its reliability is sufficiently guaranteed.

To assess the quality of the document, the court must take into account the circumstances under which the data were entered and the document was reproduced.

2824. The reliability of the entry of the data of a juridical act on a computer system is presumed to be sufficiently guaranteed where it is carried out systematically and without gaps and the computerized data are protected against alterations.

2825. A document which reproduces the data of a computerized juridical act may be contested on any grounds and its probative force is left to the appraisal of the court.

SECTION VII

REPRODUCTION OF CERTAIN DOCUMENTS

2826. Proof of a document which is in the possession of the state or of a legal person established in the public interest or for a private

interest and which has been reproduced in order to keep permanent proof thereof is made by the filing of an extract or copy of the reproduction and of the declaration attesting that the reproduction complies with the rules prescribed in this section.

A certified true copy or extract of the declaration may be received in evidence with the same force as the original.

2827. In order for a reproduction to make the same proof of the content of a document as the original, it must accurately reproduce the original, be an indelible picture of it and allow the place and date of reproduction to be determined.

The reproduction of the original must be carried out before a person specially authorized for that purpose.

2828. The person designated to witness the reproduction of a document shall, within a reasonable time, attest that the operation has been carried out by a declaration under oath indicating the nature of the document and the place and date of the reproduction, and certify the accuracy of the reproduction.

CHAPTER II

TESTIMONY

2829. Testimony is a statement whereby a person relates facts of which he has personal knowledge or whereby an expert gives his opinion.

To make proof, testimony must be given by deposition in a judicial proceeding unless otherwise agreed by the parties or provided by law.

2830. Proof by testimony may be adduced by a single witness.

A child who, in the opinion of the judge, does not understand the nature of the oath, may be permitted to testify without that formality, if the judge is of the opinion that he is sufficiently mature to be able to report the facts of which he had knowledge, and that he understands the duty to tell the truth. A judgment, however, cannot be based upon such testimony alone.

2831. The probative force of testimony is left to the appraisal of the court.

CHAPTER III

PRESUMPTION

2832. A presumption is an inference established by the law or the court from a known fact to an unknown fact.

2833. A legal presumption is one that is specially attached by law to certain facts; it exempts the person in whose favour it exists from making any other proof.

A presumption concerning presumed facts is simple and may be rebutted by proof to the contrary; a presumption concerning deemed facts is absolute and irrebuttable.

2834. The authority of *res judicata* is an absolute presumption; it applies only to the object of the judgment when the demand is based on the same cause and is between the same parties acting in the same qualities and the thing applied for is the same.

However, a judgment deciding a class action has the authority of a final judgment (*res judicata*) in respect of the parties and the members of the group who have not been excluded therefrom.

2835. Presumptions which are not established by law are left to the discretion of the court which shall take only serious, precise and concordant presumptions into consideration.

CHAPTER IV

ADMISSION

2836. An admission is the acknowledgment of a fact which may produce legal consequences against the person who makes it.

2837. An admission may be express or implied.

An admission cannot, however, be inferred from mere silence, except in the cases provided by law.

2838. An admission made by a party to a dispute or by an authorized mandatary makes proof against him if it is made in the proceeding in which it is invoked. It cannot be revoked, unless it is proved to have been made through an error of fact.

The probative force of any other admission is left to the appraisal of the court.

2839. An admission cannot be divided except where it contains facts which are foreign to the issue, or where the part of the admission objected to is improbable or invalidated by indications of bad faith or by contrary evidence, or where the facts contained in the admission are unrelated to each other.

CHAPTER V

PRODUCTION OF MATERIAL THINGS

2840. The production of material things is a means of proof which allows the judge to make his own findings. Such a material thing may consist of an object, as well as the sense impression of an object, fact or place.

2841. The production of material things cannot have probative force until their authenticity has been established by separate proof.

2842. The court may draw any inference it considers reasonable from the production of a material thing.

TITLE THREE

ADMISSIBILITY OF EVIDENCE AND PROOF

CHAPTER I

EVIDENCE

2843. All evidence of any fact relevant to a dispute is admissible and may be presented by any means.

2844. The court shall, even of its own motion, reject any evidence obtained under such circumstances that fundamental rights and freedoms are breached and that its use would tend to bring the administration of justice into disrepute.

The latter criterion shall not be taken into account in the case of violation of the right of professional privilege.

CHAPTER II

PROOF

2845. The court cannot of its own motion invoke grounds of inadmissibility under this chapter which a party who is present or represented has failed to invoke.

2846. A juridical act set forth in a writing or the content of a writing must be proved by the production of the original or a copy which legally replaces it.

However, where a party acting in good faith and with dispatch is unable to produce the original of a writing or a copy which legally replaces it, proof may be made by any other means.

2847. Where a party has been unable, for a valid reason, to produce written proof of a juridical act, such an act may be proved by any other means.

2848. Proof of a juridical act cannot be made, between the parties, by testimony where the value in dispute exceeds $1 000.

However, failing proof in writing and regardless of the value in dispute, proof may be made by testimony of any juridical act where there is a commencement of proof; proof may also be made by testimony, against a person, of a juridical act carried out by him in the ordinary course of business of an enterprise.

2849. The parties to a juridical act set forth in a writing cannot contradict or vary the terms of the writing by testimony unless there is a commencement of proof.

A commencement of proof may arise where an admission or writing of the adverse party, his testimony or the production of material things gives an indication that the writing contains inaccuracies.

2850. Proof by testimony is admissible to interpret or complete a writing or to impugn the validity of the juridical act which the writing sets forth.

2851. No proof is admitted to rebut a legal presumption where, on the ground of such presumption, the law annuls certain acts or disallows an action, unless the law has reserved the right to make proof to the contrary.

However, the presumption, if not of public order, may be rebutted by an admission made during the proceeding in which the presumption is invoked.

2852. An admission made outside the proceeding in which it is invoked is proved by the means admissible as proof of the fact which is its object.

CHAPTER III

CERTAIN STATEMENTS

2853. A statement made by a person who does not testify in a judicial proceeding or by a witness prior to a judicial proceeding is admissible as testimony if the parties consent thereto; the same rule applies to a statement that meets the requirements of this chapter or of the law.

2854. A statement made by a person who does not appear as a witness, concerning facts to which he could legally testify, is admissible as testimony provided an application is made to that effect and notice is given to the adverse party.

The court must, however, ascertain that it is impossible for the declarant to appear as a witness, or that it is unreasonable to require him to do so, and that the reliability of the statement is sufficiently guaranteed by the circumstances in which it is made.

The reliability of documents drawn up in the ordinary course of business of an enterprise, of documents entered in a register kept as required by law and of spontaneous and contemporaneous statements concerning the occurrence of facts is presumed to be sufficiently guaranteed.

2855. Previous statements by a person who appears as a witness, concerning facts to which he can legally testify, are admissible as testimony if their reliability is sufficiently guaranteed.

2856. Statements thus made must be proved by producing the writing.

Any other statement cannot be proved except by the testimony of the declarant or of the persons having had personal knowledge of it, unless otherwise provided in articles 2857 and 2858.

2857. A statement recorded in writing by a person other than the declarant may be proved by producing the writing if the declarant has acknowledged that the writing faithfully reproduces his statement.

The same rule applies where the writing was drawn up at the request of the declarant or by a person acting in the performance of his duties, if there is reason to presume, having regard to the circumstances, that the writing accurately reproduces the statement.

2858. A statement recorded on magnetic tape or by any other reliable recording technique may be proved by such means, provided its authenticity is separately proved.

BOOK EIGHT

PRESCRIPTION

TITLE ONE

RULES GOVERNING PRESCRIPTION

CHAPTER I

GENERAL PROVISIONS

2859. Prescription is a means of acquiring or of being released by the lapse of time and according to the conditions fixed by law: the first is called acquisitive prescription and the second, extinctive prescription.

2860. That which is not an object of commerce, transferrable or susceptible of appropriation by reason of its nature or appropriation cannot be prescribed.

2861. Prescription takes effect in favour of or against all persons, including the state, subject to express provision of law.

2862. The court cannot, of its own motion, supply the plea of prescription unless the right of action is forfeited by law. Such forfeiture is never presumed; it must be expressly stated.

2863. The period of time required for prescription is reckoned by full days. The day on which prescription begins to run is not counted in computing such period.

Prescription is acquired only when the last day of the period has elapsed. Where the last day is a Saturday or a non-juridical day, prescription is acquired only on the following juridical day.

2864. Dispossession fixes the beginning of the period of acquisitive prescription.

The day on which the right of action arises fixes the beginning of the period of extinctive prescription.

2865. Prescription may be pleaded at any stage of judicial proceedings, even in appeal, unless the party who has not pleaded prescription is, in light of the circumstances, presumed to have renounced it.

2866. A ground of defence that may be raised to defeat an action can still be invoked, even if the time for using it by way of direct action has expired, provided such ground could have constituted a valid defence to an action at the time when it could have served as the basis of a direct action.

Maintenance of this ground does not revive a direct action that is prescribed.

CHAPTER II

RENUNCIATION OF PRESCRIPTION

2867. Prescription cannot be renounced in advance.

A person may, however, renounce prescription which has been acquired or any benefit of time elapsed by which prescription has begun.

2868. No prescriptive period other than that provided by law may be agreed upon.

2869. Renunciation of prescription is either express or tacit; tacit renunciation results from an act which implies the abandonment of an acquired right.

However, renunciation of prescription which has been acquired in respect of immovable real rights must be published at the registry office.

2870. A person who cannot alienate cannot renounce any prescription that is acquired.

2871. Any person who has an interest in the acquisition of prescription may plead it, even if the debtor or the possessor renounces it.

2872. Following renunciation, prescription begins to run again for the same period.

CHAPTER III

INTERRUPTION OF PRESCRIPTION

2873. Prescription may be interrupted naturally or civilly.

2874. Acquisitive prescription is interrupted naturally where the possessor is deprived of the enjoyment of the property for more than one year.

2875. Extinctive prescription is interrupted naturally where the holder of a right, having failed to avail himself of it, exercises that right.

2876. The deposit of a judicial demand before the expiry of the prescriptive period constitutes a civil interruption, provided the demand is served on the person to be prevented from prescribing not later than sixty days following the expiry of the prescriptive period.

Seizures, cross demands, interventions and oppositions are considered to be judicial demands.

2877. Any application by a creditor to share in a distribution with other creditors also interrupts prescription.

2878. Interruption does not occur if the application is dismissed, the suit discontinued or perempted or if proceedings are discontinued for three years.

2879. Where the application of a party is dismissed without a decision having been made on the merits of the action and where, on the date of the judgment, the prescriptive period has expired or will expire in less than three months, the plaintiff has an additional period of three months from service of the judgment in which to claim his right.

The same applies to arbitration; the three-month period then runs from the time the award is made, from the end of the arbitrators' mandate, or from the service of the judgment annulling the award.

2880. An interruption resulting from a judicial demand continues until the judgment becomes *res judicata* or, as the case may be, until the transaction between the parties.

The interruption has effect with regard to all the parties in respect of any right arising from the same source.

2881. An interruption which results from the bringing of a class action benefits all the members of the group who have not requested their exclusion from the group.

2882. Acknowledgement of a right, as well as renunciation of the benefit of a period which has elapsed, interrupts prescription.

2883. A judicial demand or any other act of interruption against the principal debtor or against a surety interrupts prescription with regard to both.

2884. Interruption with regard to one of the creditors or debtors of a solidary or indivisible obligation has effect with regard to the others.

2885. Interruption with regard to one of the joint creditors or debtors of a divisible obligation has no effect with regard to the others.

2886. Interruption with regard to one of the co-heirs of a solidary creditor or debtor of a divisible obligation has effect, with regard to the other solidary creditors or debtors, only as regards the portion of that heir.

2887. Following interruption, prescription begins to run again for the same period.

CHAPTER IV

SUSPENSION OF PRESCRIPTION

2888. Prescription does not run against persons if it is impossible in fact for them to act by themselves or to be represented by others.

2889. Prescription does not run against a child yet unborn.

Nor does it run against a minor or a person of full age under curatorship or tutorship with respect to remedies he may have against his representative or against the person entrusted with his custody.

2890. Spouses cannot prescribe against each other during cohabitation.

2891. Prescription does not run against an heir with respect to his claims against the succession.

2892. A motion for leave to bring a class action suspends prescription in favour of all the members of the group for whose benefit it is made or, as the case may be, in favour of the group described in the judgment granting the motion.

The suspension lasts until the motion is dismissed or annulled or until the judgment granting the motion is set aside; however, a member requesting to be excluded from the action or who is excluded therefrom by the description of the group made by the judgment on the motion, an interlocutory judgment or the judgment on the action ceases to benefit from the suspension of prescription.

In the case of a judgment, however, prescription runs again only when the judgment is no longer susceptible of appeal.

2893. Suspension of prescription of solidary claims and indivisible claims is subject to the rules governing interruption of prescription of such claims.

TITLE TWO

ACQUISITIVE PRESCRIPTION

CHAPTER I

CONDITIONS OF ACQUISITIVE PRESCRIPTION

2894. Acquisitive prescription is a means of acquiring a right of ownership, or one of its dismemberments, through the effect of possession.

2895. Acquisitive prescription requires possession in accordance with the conditions laid down in Book Four, Property.

2896. A successor by particular title may join to his possession that of his predecessors in order to complete prescription.

A successor by universal title or by general title continues the possession of his predecessor.

2897. Detention cannot serve as the basis for prescription, even if it extends beyond the term agreed upon.

2898. A precarious title may be interverted by a title proceeding from a third person or by an act performed by the holder which is incompatible with precarious holding.

Interversion renders the possession available for prescription from the time the owner learns of the new title or of the act of the holder.

2899. Third persons may prescribe against the owner during its dismemberment or when it is held precariously.

2900. The institute and his successors by universal title or by general title cannot prescribe against the substitute before the opening of the substitution.

CHAPTER II

PERIODS OF ACQUISITIVE PRESCRIPTION

2901. The period for acquisitive prescription is ten years, except as otherwise fixed by law.

2902. A person who, as owner, has for ten years possessed an immovable that is not registered in the land register may acquire the ownership of it only upon a judicial demand.

The possessor may, under the same conditions, exercise the same right in respect of a registered immovable where the owner of the immovable is not identified in the land register; the same rule applies where the owner is dead or an absentee at the beginning of the ten-year period or where the land register indicates that the immovable has become ownerless property.

2903. The possessor in good faith of movable property acquires the ownership of it by three years running from the dispossession of the owner.

Until the expiry of that period, the owner may revendicate the movable property, unless it has been acquired under judicial authority.

2904. To prescribe, a subsequent acquirer need merely have been in good faith at the time of the acquisition, even where his effective possession began only after that time.

The same applies where there is joinder of possession, with respect to each previous acquirer.

TITLE THREE

EXTINCTIVE PRESCRIPTION

2905. Extinctive prescription is a means of extinguishing a right which has not been used or of pleading the non-admissibility of an action.

2906. The period for extinctive prescription is ten years, except as otherwise fixed by law.

2907. Actions to enforce immovable real rights are prescribed by ten years.

However, an action to retain or obtain possession of an immovable must be brought within one year from disturbance or dispossession.

2908. A judgment ordering payment constitutes a title which is prescribed by ten years, even where the right which it sanctions is prescribed by a different period.

2909. An action to enforce a personal right or movable real right is prescribed by three years, if the prescriptive period is not otherwise established.

2910. Where the right of action arises from moral, corporal or material damage appearing progressively or tardily, the period runs from the day the damage appears for the first time.

2911. In an action in nullity of contract, the prescriptive period runs from the day the person invoking the cause of nullity becomes aware of such cause or, in the case of violence or fear, from the day it ceases.

2912. The application by a surviving spouse for the fixing of the compensatory allowance is prescribed by one year from the death of his spouse.

2913. An action for defamation is prescribed by one year from the day on which the defamed person learned of the defamation.

2914. Notwithstanding any stipulation to the contrary, where an action is founded on the obligation to make reparation for bodily injury caused to another, the requirement that notice be given prior to the bringing of the action or that proceedings be instituted within

a period not exceeding three years cannot hinder a prescriptive period provided for by this Book.

2915. In the case of a contract of successive performance, prescription runs in respect of payments due, even though the parties continue to perform one or another of their obligations under the contract.

2916. In an action to reduce an obligation which is performed successively, the prescriptive period runs from the day the obligation becomes exigible, whether the obligation arises from a contract, the law or a judgment.

2917. No holder may be released by prescription from the prestation attached to his detention; the amount may be prescribed, however, as may the arrears.

BOOK NINE

PUBLICITY OF RIGHTS

TITLE ONE

PUBLICITY

CHAPTER I

GENERAL PROVISIONS

2918. Publicity of rights arises from registration in the land register, the register of movable real rights or the register of personal rights, unless some other mode is expressly permitted by law.

Registration benefits the persons whose rights are thereby published.

2919. Any person, even a minor or a person under protection, may request the publication of a right, on his own behalf or on behalf of another.

2920. Any renunciation or restriction of the right to publish a right requiring publication, as well as any penal clause relating thereto, is without effect.

2921. Publication of a right may be renewed at the request of any interested person.

CHAPTER II

RIGHTS REQUIRING PUBLICATION

2922. The acquisition, creation, recognition, extinction, modification or transmission of an immovable real right requires publication.

Renunciation of a succession, legacy, community of property, division of acquests or partition of the value of family patrimony also requires publication.

Other personal rights and movable real rights require publication to the extent prescribed or expressly authorized by law.

2923. Restrictions of the right to alienate, other than purely personal restrictions, and clauses of resolution, resiliation or conditional extinction of any right requiring publication themselves require publication.

2924. Transfers of authority over immovables between the governments of Québec and Canada may be published.

Transfers of authority between the government of Québec or Canada and legal persons established in the public interest may also be published.

Registration of the transfer is requested by filing a notice specifying under which Act the transfer is made.

TITLE TWO

EFFECTS OF PUBLICATION

CHAPTER I

OPPOSABILITY OF RIGHTS

2925. Publication of rights allows them to be set up against third persons, establishes their rank and, where the law so provides, gives them effect.

Rights produce their effects between the parties even before publication, unless the law expressly provides otherwise.

2926. Renewal of the publication of a right, made in the form prescribed in the rules of application of this Book, preserves the opposability of the right at its original rank.

2927. A right that has been published is deemed known by a person acquiring or publishing a right in the same property.

2928. Publication of a right in the land register, register of movable real rights or register of personal rights carries simple presumption of the existence of that right.

Publication in the land register of a right of ownership, or of a dismembered part of such right, in an immovable that has been immatriculated is deemed exact if not contested within ten years.

CHAPTER II

RANKING OF RIGHTS

2929. Unless otherwise provided by law, rights rank according to the date, hour and minute entered on the memorial of presentation, provided that the entries have been made in the proper registers.

Where publication by delivery is authorized by law, rights rank according to the time at which the property or title is delivered to the creditor.

2930. Where two acquirers hold their title from the same predecessor, the right is acquired by the acquirer who first publishes his right.

2931. Where several registrations concerning the same property and rights of the same nature are requested at the same time, the rights rank concurrently; if the rights are mutually exclusive, registration is without effect.

2932. The registration of an immovable hypothec is without effect until the grantor's title is published.

An immovable hypothec ranks from the date of publication of the grantor's title, but after the vendor's hypothec arising from the act of acquisition.

However, if several immovable hypothecs have been registered before the grantor's title, they rank from the date, hour and minute of their respective registrations.

2933. A hypothec affecting a universality of immovables ranks, in respect of each immovable, only from the time of registration of the hypothec against each.

Registration of a hypothec against immovables acquired subsequently is obtained by filing a notice containing the designation of the immovable acquired, making reference to the instrument creating the hypothec and setting forth the determinate amount for which the hypothec was granted.

2934. The instrument creating a hypothec affecting a universality of movables shall state the nature of that universality; such a hypothec ranks, in respect of each movable included in the universality, only from registration thereof in the register, under the designation of the grantor, and, if so prescribed by regulation, under the identification number of the movable.

2935. The vendor's hypothec for payment of the sale price of a movable ranks ahead of all other hypothecs granted by the purchaser on the property sold, if it is published within fifteen days after the sale; if it is published after that time, it ranks in accordance with the rules applicable to hypothecs generally.

2936. A hypothec on a movable subsequently incorporated into an immovable affected by a hypothec registered in the land register ranks after the latter hypothec, and cannot be set up against third persons before its registration in the land register.

A hypothec on a movable incorporated into an immovable subsequently affected by a hypothec published in the land register ranks ahead of the latter hypothec, if the registration of the movable hypothec in the land register is earlier than the registration of the immovable hypothec. However, if the registration of the movable hypothec is later than that of the immovable hypothec, the latter ranks ahead of the former, subject to any contrary conventions or stipulations in the instrument creating the immovable hypothec.

2937. Legal hypothecs in favour of persons having taken part in the construction or renovation of an immovable take the rank of the first conservation notice published; such hypothecs rank concurrently, in proportion to the value of each claim, by preference to any other hypothec published.

2938. Hypothecs on movables that have been transformed, mixed or combined so as to form a new movable take the rank of the first hypothec published against any property having served to form the new movable, provided that the registration of the hypothec on the movable that was transformed, mixed or combined has been renewed against the new movable; if that is the case, the hypothecs rank concurrently, in proportion to the amount of each claim.

2939. A movable hypothec acquired on the movable of another or on a future movable ranks from the time of its registration but after the vendor's hypothec resulting from the title of the grantor, if any.

2940. A floating hypothec ranks according to the date, hour and minute of registration of the notice of crystallization.

If several floating hypothecs are the subject of notices of crystallization, they rank among themselves from the date, hour and minute of their respective registrations, regardless of the date, hour and minute of registration of the notices of crystallization.

2941. Cession of rank between hypothecary creditors must be published.

Where it occurs, the rank of the creditors is inverted, to the extent of their respective claims, but in such a manner as not to prejudice any intermediate creditors.

CHAPTER III

OTHER EFFECTS

2942. Publication does not interrupt prescription.

However, publication of an immovable real right concerning an immatriculated immovable interrupts acquisitive prescription of that right as long as the publication subsists.

2943. Rights published after the registration of the minutes of the creditor's seizure of a movable or immovable property cannot be set up against that creditor, provided the seizure is followed by a judicial sale.

Similarly, rights published after the registration of a creditor's notice of intention to exercise a hypothecary right cannot be set up against that creditor without his consent, provided that the hypothecary right is exercised.

2944. Registration of a hypothec preserves, in favour of the creditor, the same rank for the interest due for the current year and the three preceding years as for the principal.

Similarly, the registration of an annuity preserves, in favour of the recipient, the preference for the periodic payments for the current year and the arrears for the three preceding years.

2945. The creditor or recipient has a hypothec for the surplus of interest due or arrears of annuity only from the time of registration of a notice setting forth the amount claimed.

However, interest due or arrears owing at the time of registration of the hypothec or annuity are preserved by the registration if the amount is stated in the requisition.

2946. Substitution has no effect in respect of property acquired in replacement of substituted property unless the substitution is mentioned in the instrument of acquisition and the substitution is published.

Publication of the substitution does not affect the rights of third persons who have already published the rights they derive from the institute under an instrument by onerous title.

CHAPTER IV

PROTECTION OF THIRD PERSONS IN GOOD FAITH

2947. A person who acquires a real right by onerous title, relying in good faith on the entries in the registers, is secure in his right if it has been published.

2948. Notice given or knowledge acquired of a right that has not been published can never compensate for absence of publication.

2949. Absence of publication may be set up by any interested party against any person, even a minor or a person under protection, and against the state.

2950. Every interested person may apply to the court, in cases of error, to obtain the correction or cancellation of a registered entry.

CHAPTER V

ADVANCE ENTRY

2951. Any judicial demand concerning a right requiring publication may, by means of a notice, be the subject of an advance entry in the proper register.

2952. Where a person is, through no fault of his own, prevented from publishing a right arising from a will by reason of the concealment, destruction or contestation of the will or of any other obstacle, he may, to preserve that right, apply for advance entry of

the right he claims by filing a notice within one year after the testator's death.

2953. Rights which are the object of the judgment or transaction terminating the action are deemed published from the time of their advance entry, provided they are published within thirty days after the judgment becomes *res judicata* or the transaction takes place.

Rights under a will that was prevented from being published are also deemed published from the time of their advance entry, provided the will is published within thirty days after the obstacle is removed or after the will is obtained or probated and within three years from the opening of the succession.

TITLE THREE

MECHANISMS OF PUBLICATION

CHAPTER I

REGISTERS OF RIGHTS

SECTION I

GENERAL PROVISIONS

2954. In every registry office of every registration division there shall be kept a land register, together with the address index relating to it, as well as any other register the keeping of which is prescribed by law or the statutory instruments under this Book.

In addition, there shall be kept in the office designated by the Minister of Justice, for the whole of Québec, a register of movable real rights, the address index relating thereto, and a register of personal rights.

2955. Publication of rights concerning an immovable is made in the land register of the registry office of the division in which the immovable is situated.

Publication of rights concerning a movable is made by registering the right in the central register of movable real rights; if the right pertains also to an immovable, registration must also be made in the land register in accordance with the rules applicable to that register.

Publication of any other right is made by registering the right in the central register of personal rights.

2956. The registers and documents kept in registry offices, including memorials of presentation, are public documents; they may be examined in accordance with the procedure prescribed in the statutory instruments under this Book.

SECTION II

LAND REGISTER

2957. The land register of a registry office shall consist of one land book for each of the cadastres in the territory of that office.

Each land book shall be made up of the same number of land files as there are lots delineated on the cadastral plan; each land file shall list all the entries and cancellations which concern the immovable.

2958. If the immovable is affected with a right of superficies, emphyteusis, coemphyteusis, usufruct or use, the registrar shall establish a complementary file in the manner prescribed in the statutory instruments under this Book.

A complementary file shall also be established in the case of an undivided co-ownership, where the convention identifies the share of each co-owner, or where a fraction of co-ownership may, under the terms of the declaration of co-ownership, be held by several persons each having a periodic and successive right of enjoyment of that fraction.

2959. Where part of the territory of a registration division is without cadastral survey, the register shall contain only one land book for that part.

This land book shall consist of as many land files as there are immovables without immatriculation in that part of the territory, even if those immovables belong to the same owner, provided that each immovable was acquired under separate title.

2960. In territories without cadastral survey, and in territories with cadastral survey where permitted by law, each land file shall be identified by a serial number established in the manner prescribed in the rules of application.

2961. The owner of several immovables not immatriculated but contiguous may require the registrar to consolidate the files opened for each immovable into a single file, if none of the immovables is affected by a real right in favour of a third person.

The owner must file a requisition containing the description of the amalgamated immovables and identifying the related land files and any subsisting entries to be carried over to the new land file.

The registrar shall indicate the correspondence between the old and the new land files and proceed with the carry-over of entries.

2962. Any partitioning of an immovable without immatriculation gives rise to the opening of new land files.

The document evidencing the partitioning must include a declaration containing a description of the immovables concerned and identifying the original land file and any subsisting entries to be carried over to the new land files.

The registrar shall establish the correspondence between the old and the new land files and proceed with the carry-over of entries.

SECTION III

REGISTER OF MOVABLE REAL RIGHTS AND REGISTER OF PERSONAL RIGHTS

2963. The register of real movable rights and the register of personal rights shall consist of files kept in alphabetical, alphanumerical or numerical order, under the designation of the persons named in the requisition for registration or according to any other method prescribed by the statutory instruments under this Book.

CHAPTER II

APPLICATIONS FOR REGISTRATION

SECTION I

GENERAL RULES

2964. Requisitions for registration in the land register, in the register of movable real rights or in the register of personal rights shall identify the holders and grantors of the rights, state the nature of the rights, describe the property concerned and mention any other fact pertaining to publicity, as prescribed by law or by the statutory instruments under this Book.

2965. A requisition for registration in the land register is presented at the registry office of the division in which the immovable is situated.

The requisition is made by presenting an abstract of the instrument drawn up in accordance with the standards prescribed by regulation; if the abstract cannot be presented, the requisition is made by means of a summary of the document setting out the particulars prescribed by regulation.

The requisition may also, where the law so provides, be made by means of a notice; it may in addition be made by means of the instrument itself, if the instrument contains only the information prescribed in the standards.

2966. A requisition for registration in the register of movable real rights or in the register of personal rights shall be filed in the central register; it is made by the production of a notice, unless otherwise provided by law or the regulations.

2967. Applications for registration shall be signed, certified and presented in the manner prescribed by law, this title or the regulations.

2968. Every person requiring registration in the land register must present, in addition to the standardized abstract or summary, the instrument itself or any document summarized in the abstract or summary, for conservation and consultation.

2969. Whatever the form of the requisition for registration, and whatever the content of the document summarized in the abstract or summary, only those rights which are set out in the requisition and which must be entered in the register are published.

Nevertheless, where authorized by regulation, reference in the registration to the document under which registration is required is permitted to identify the property on which the right is exercised.

2970. Where an application for registration is made by the presentation of a summary, one summary is not sufficient to summarize non-complementary or unrelated documents.

However, one summary is sufficient where the right intended to be published is evidenced in several documents.

SECTION II

CERTIFICATES

2971. The notary before whom an instrument concerning a right open to publication in the land register is executed is bound to

certify that he has verified the identity, quality and capacity of the parties, that the document represents the will expressed by the parties and, where applicable, that the title of the grantor or last holder of the right concerned has been previously and validly published.

2972. A land surveyor is bound to certify that he has verified the identity of the parties to the minutes of a determination of boundaries drawn up by him, and where expedient, that the document represents the will expressed by the parties.

2973. Every officer of justice, trustee in bankruptcy, municipal secretary or clerk or ministerial officer drafting authentic or public acts shall certify that he has verified the identity of the persons contemplated in the acts drafted by him which require publication by registration in the land register.

2974. Where rights for which registration in the land register is required are evidenced in an instrument in private writing, the summary or abstract must indicate the date and place at which the instrument was drafted; it shall be accompanied with a certificate of a notary or advocate attesting that he has verified the identity, quality and capacity of the parties and the validity of the instrument as to its form, that the document represents the will expressed by the parties and, where applicable, that the title of the grantor or last holder of the right concerned has been previously and validly published.

2975. Where registration in the land register is required by means of a summary, the certificate of the notary or advocate who draws up the document shall also attest that the summary is accurate.

2976. The certificate shall be recorded in a declaration which must set out the name, quality and domicile of the person making it.

2977. No certificate of verification is required for the registration of rights in the register of movable real rights or the register of personal rights.

Documents presented for registration in the land register of declarations of family residence, immovable leases or notices prescribed by law, other than notices required for the registration of a legal hypothec or the cadastral notice for the registration of a right, need not be certified by a notary or advocate, but by two witnesses, one of whom under oath.

2978. Documents drawn up in a language other than English or French must be accompanied with a translation certified in Québec as being faithful.

SECTION III

SPECIAL REGISTRATION RULES

2979. A minute of determination of boundaries shall be presented with the related plan and with the requisition for registration of the judgment of homologation, if any. It must state expressly that the boundary between the properties coincides with the boundaries between the corresponding lots on the cadastre.

If the minute does not state that the boundaries coincide, registration of the minute in the land register must be refused until an amendment to the plan is deposited in the registry office and notice of the amendment relating to the lots concerned is registered in the land register.

2980. The deposit of a plan in the registry office under an Act requiring it is equivalent to publication of the plan, provided it is accompanied with a notice containing the description of the immovable concerned.

This provision does not apply to the deposit of cadastral plans.

2981. The rights of an heir or of a legatee by particular title in a property of the succession are published by registration of a declaration to which is annexed the will or an abstract or summary of the will.

The declaration must be made by notarial deed *en minute*, where the property is an immovable.

2982. The declaration of an heir or of a legatee by particular title must set forth the name and last domiciliary address of the deceased, his date and place of birth and of death, and his matrimonial regime, if any.

It must also set forth whether the succession is legal or testamentary, the quality of the declarant as heir, legatee by particular title or spouse, the degree of relationship between each of the heirs and the deceased, any renunciations, the designation of the property and of the persons concerned, and the right of each in the property.

2983. Notices of forced sales and other notices prescribed in the Book on Preference and Hypothec must be published.

No copy of the instrument evidencing the sale may be issued before the sale is published, at the purchaser's expense, by the person entrusted with the sale.

2984. The person entrusted with a sale for non-payment of immovable taxes must, within ten days after the sale, file a list identifying each immovable sold, its purchaser and last owner and indicating the mode of acquisition and the registration number of the title of the last owner.

The sale shall be registered with the mention that it was a sale for non-payment of immovable taxes.

2985. Where a preference or a hypothec is acquired by subrogation or assignment of a preferred or hypothecary claim, publication of the subrogation or assignment is made at the registry office where the immovable preference or immovable hypothec was published or, in the case of a movable preference or hypothec, in the register of movable real rights.

A copy or extract of the instrument of subrogation or assignment bearing the certificate of registration must be furnished to the debtor.

If these formalities are not observed, the subrogation or assignment cannot be set up against a subsequent assignee who has observed them.

2986. Where subrogation to a preferred or hypothecary claim is acquired by operation of law, publication of the subrogation is effected by registering the instrument from which it derives; if there is no instrument, publication of the subrogation is effected by producing a declaration stating the causes of the subrogation.

2987. A summary certified by a notary may, if it does not summarize an instrument creating a hypothec, include the lot number and, if any, the description by metes and bounds of the immovable where the right is exercised even if the number does not appear in the document summarized in the summary.

A summary certified by an advocate or a notary may include, even if the instrument contains no mention thereof, the date and place of birth of the persons named therein, as well as the declarations required by law for certain transfers of immovables.

CHAPTER III

DUTIES AND FUNCTIONS OF THE REGISTRAR

2988. The registrar shall receive the documents and issue to the person presenting them a memorandum, signed by him, on which he shall indicate the exact date, hour and minute of presentation, as well as the particulars necessary for identifying the document.

Subsequently, day by day, in the order of presentation of documents, he shall with all possible diligence make the entries prescribed by law or by the statutory instruments under this Book in the appropriate register.

However, where the documents presented are not admissible, the registrar shall make no entry in the registers; he shall return the documents to the applicant and inform him in writing of the reasons justifying his refusal.

2989. The registrar shall ascertain that the documents presented in support of an entry in a register contain the prescribed particulars and meet the requirements prescribed by law and the statutory instruments under this Book.

2990. Where documents presented contain inaccuracies or irregularities other than clerical errors, or are not accompanied with the supporting documents, the registrar shall return them to the applicant with a note indicating the reasons for refusing registration and listing all the inaccuracies or irregularities discovered.

2991. The registrar shall remit the copy or duplicate of the document presented and the supporting documents, if any, to the applicant, after certifying on the requisition for registration, over his signature, the date, hour and minute of presentation, together with the registration number entered in the appropriate register. The certificate may also be affixed to a copy of the document forming part of the records of the office.

2992. Requisitions are deemed presented from the time they are received by the registrar entrusted with the keeping of the proper register.

Requisitions delivered to the registry office outside regular hours of presentation of documents are deemed presented at the time of resumption of service.

If several requisitions are delivered to the registry office by the same mail delivery or are presented by the same bearer, they are deemed presented simultaneously.

2993. Unless otherwise ordered by the court, the registrar shall not register in the land register the rights set out in the requisition presented before verifying that the title of the grantor or last holder of the right concerned has been previously registered or, in the case of an original title granted by the state, that the title of the state is presumed.

This rule does not apply to leases of immovables, hypothecs or rights acquired without a title, in particular by accession.

Any registration made in contravention of this article is without effect until the title of the grantor or the holder is registered.

2994. Before registering a subrogation, the assignment of a claim or the renewal of the registration of a right in the proper register, the registrar must verify the registration number, if any, of the title of indebtedness. If the number is inaccurate, he shall refuse registration.

2995. The registrar, upon receiving notice of a change of name of the holder or grantor of a published right, containing a reference to the registration number of that right and accompanied with a certified copy of the document evidencing the change, shall enter the change in the proper register, establish the correspondence between the former name and the new name and indicate the registration number of the right concerned.

To obtain registration of a change of name in the land register, the notice must also include the designation of the immovable concerned.

2996. The registrar shall correct any clerical error noted by him in a register or registration certificate in the manner prescribed by regulation; where he notes that an entry has been omitted, he shall make that entry after the last entry appearing in the register.

In all cases, the registrar shall indicate the date, hour and minute of the correction or entry.

2997. The registrar is bound to notify, as soon as possible, each person having required registration of his address, that the property in which he holds a published right is the subject of a notice of intention to exercise a hypothecary right or a remedy other than sale for

non-payment of immovable taxes. He shall do the same where a notice requires the abandonment of a taking in payment or where the property is under seizure, is to be sold by judicial sale, or has been sold for non-payment of immovable taxes; the registrar shall indicate the place and time of any sale.

Similar notification must be sent to the Attorney General in the case of any property affected by a hypothec or preferred claim in favour of the state.

2998. Registration of a prior notice of sale for non-payment of immovable taxes requires no notification by the registrar; that responsibility is incumbent upon the municipality or school board having given the prior notice.

2999. No registrar may use the registers to furnish to any person a list of owners entered in the land register, a list of the immovable properties owned by a person or a list of hypothecary creditors. Furthermore, no search in the land register by reference to a person's name is permitted, unless authorized by law or by the court.

3000. The registrar is bound to issue to any person requesting it a certified statement of rights registered in the registers; the statement shall indicate the date, hour and minute of the updating of the register. Any electronically-produced statement of entries appearing in the registers shall be certified by the registrar.

The registrar is also bound to issue, to any person requesting it, a copy of documents forming part of the records of the office.

3001. The registrar is not liable for any injury which may result from information furnished by him as a result of an error not due to him in the identification of a person or the designation of a property.

3002. Registrars are bound

(1) to keep the documents deposited in registry offices or in the central register;

(2) to make entries in the registers so as to ensure the integrity of the information;

(3) to protect the entries in the registers against any alteration;

(4) to make and keep a copy of the registers in a place other than the registry office, for safety, and to maintain for the records a duplicate of the land register.

Registrars cannot surrender the registers and documents or be required to produce a copy of them outside the registry office except in judicial proceedings in improbation or in contestation of the authenticity of a document.

CHAPTER IV

INDEX OF ADDRESSES

3003. The index of addresses contains the addresses that preferred or hypothecary creditors, or the assignees, heirs, legatees by particular title or donees of such creditors, holders of real rights, spouses having published a declaration of family residence or beneficiaries under such a declaration, or any other interested persons have caused to be registered in order to receive notification from the registrar of certain events affecting their rights.

Registration of an address is valid as long as the right to which it relates subsists.

3004. A financial institution having caused its address to be registered, by notice, with respect to an immovable situated in a registration division must, thereafter, refer to the registration number of that notice in any instrument evidencing a right in its favour in an immovable situated in the same registration division.

If the right pertains to a movable, reference shall be made to the number of the notice, if any, appearing in the register of movable real rights.

3005. Upon a change of address or a change in the address or name of the person concerned, a new notice shall be given to replace, under the same number, the notice filed previously.

CHAPTER V

STATUTORY INSTRUMENTS

3006. Regulations made by the Government under this Book shall establish the standards of presentation of requisitions for registration and determine the form and content thereof; they shall also determine the form and content of documents, notices, certificates and declarations which are not provided for by law.

The regulations shall also determine the form, medium and content of any register kept by a registrar, the method of numbering the land files of immovables and of real rights exercisable on state resources which the law defines as property separate from the land from which they issue, the manner of making entries, corrections and cancellations in the registers, and the abbreviations which may be used in the designation of a movable. They shall also fix the days and hours during which registry offices shall be open, the fees exigible for the examination of registers, the verification of documents before their filing and the issue of statements and certificates, and the registration fees exigible, with the percentage of fees to be retained where registration is refused.

The regulations may permit that the designation of an immovable without immatriculation or of a real right exercisable on state resources which the law defines as property separate from the land from which it issues be made by the sole mention of the serial number assigned to it in the land register.

3007. The Minister of Justice may determine, by order, the procedure according to which registers may be examined, the rules governing the issuance of statements or certificates and the method of assigning a numerical code, valid for the whole territory, to any person requiring registration.

The Minister may also, by order, change the opening hours of any registry office and establish additional access codes to the registers.

TITLE FOUR

IMMATRICULATION OF IMMOVABLES

CHAPTER I

CADASTRAL PLAN

3008. The immatriculation of an immovable shall consist in establishing its relative position on a cadastral plan, determining its boundaries, measurements and area and assigning a number to the immovable.

The immatriculation of an immovable shall include the identification of the owner, the mode of acquisition, the registration number of the title of ownership and, where expedient, the correspondence between the old and new cadastral numbers.

3009. The cadastral plan is drawn up according to law and forms part of the land register; it is presumed accurate.

In the case of discrepancy between the boundaries, measurements and area shown on the plan and those mentioned in the documents presented, those on the plan are presumed accurate.

The presumption of accuracy of the measurements and area shown on the plan is always simple presumption.

3010. The cadastral plan becomes effective on the day the land file is opened in the land register of the registry office concerned.

The opening of land files must be made in the order of receipt of cadastral plans, with all possible diligence.

3011. Every cadastral plan must be submitted to the Minister responsible for the cadastre, who, if satisfied that the plan is made according to law and is accurate, shall deposit a copy certified by him in the registry office; he shall also send a copy to the office of the municipality where the immovable is situated.

3012. Except where it pertains to an immovable situated in territory without cadastral survey, no right of ownership may be published in the land register unless the immovable concerned is identified by a separate lot number on the cadastre.

Immovables, common and private portions of a divided co-ownership or of a co-emphyteusis, as well as the *situs* of rights of superficies or emphyteusic ownership must be immatriculated where a co-ownership is established on the immovable in which such rights are held.

No declaration of co-ownership or of co-emphyteusis may be registered unless a cadastral plan of the immovable has been made, and contains the immatriculation of the private and common portions.

3013. The *situs* of a real right exercisable on state resources defined as property being separate from the land from which it issues such as a mining right, or the *situs* of a railway network, a network of cable communications, water distribution, power lines, oil or gas pipelines or sewage conduits may be immatriculated.

However, connections between a network and the immovables served by it are not shown on the cadastral plan.

3014. From the day a cadastral plan becomes effective the number assigned to a lot is its sole designation and is sufficient designation in any document referring to it.

Where the right which is to be published pertains to an immovable composed of several whole lots, each lot must be individually designated.

3015. From the day a cadastral plan comes into effect, every person drafting an instrument which must or may be published is bound to designate immovables by the number assigned to them on the cadastral plan.

Failing such designation, the requisition for registration of a right must be refused, unless a notice containing the description of the immovable is presented, with the instrument itself, the standardized abstract or summary, in accordance with the rules established in this Book.

The notice of requisition for registration of the right must be made in the manner prescribed in the regulations made for the application of this Book, and be certified.

3016. The registration of a right in the land register in relation to an immovable that is not property designated in the requisition is without effect, and cannot be set up against third persons until a notice containing the description of the immovable concerned is registered.

3017. In territory without cadastral survey and also in territory with cadastral survey if permitted by law, an immovable must be described by metes and bounds and by its measurements; the description must also indicate the necessary landmarks to locate the relative position of the immovable and refer to the number corresponding to the land file or state that none exists.

After a land file is opened, every instrument of alienation *inter vivos* concerning the immovable must indicate whether the immovable coincides, wholly or in part, with the immovable for which the land file was opened. If this indication does not appear in the requisition, all registrations must be refused.

The second paragraph of this article applies, adapted as required, to every instrument of alienation *inter vivos* concerning a real right exercisable on state resources which is not immatriculated.

3018. Where an immovable consists of parts of several lots, each part of a lot must be described by metes and bounds and its measurements.

The description of a part of lot as the remainder after alienation of other parts of the lot, or by reference to the names of the owners of its adjoining properties, is not admissible.

3019. The designation of a railway network, or a network of cable communications, water distribution, power lines, oil or gas pipelines or sewage conduits shall include, apart from an indication of its general nature,

(1) if the network is immatriculated, the cadastral number assigned to it;

(2) if the network is not immatriculated, the designation, in territory with cadastral survey, of the lots on or over which it passes or, in territory without cadastral survey, a description sufficient to identify it.

3020. An immatriculated real right exercisable on state resources shall be designated by the immatriculation number assigned to it. That number, with an indication of the nature of the right, shall be sufficient designation in any document which refers to it.

The immatriculation number assigned to a mining right shall include the designation of the immovables on which the mining right is exercised, in order that the relevant correspondences be entered in the land register.

3021. A real right exercisable on state resources which is not immatriculated shall be designated by the mention of the nature of the right and a description of the place where it is exercised.

The requisition for the opening of the land file of that right must contain the number of the land files of the immovables on which it is exercised.

Until such time as the correspondence is not entered in the land register, the registration of the real right exercisable on state resources cannot be set up against third persons.

3022. The immatriculation of the private and common portions of a divided co-ownership cannot take place before the foundation and main walls of the building in which they are situated allow measurement of their boundaries.

3023. A person authorized to expropriate must, in territory with cadastral survey, submit to the minister responsible for the cadastre a plan, signed by that person on behalf of the owner, in order that the required part and the remainder be immatriculated; he must, in addition, in the case of a plan involving a change of number, give notice of the deposit to every person having caused his address to be registered, but the consent of the creditors and the beneficiary of a declaration of family residence is not required for the obtention of the new cadastral numbering.

No transfer under the Expropriation Act nor cession of the required part of the lot may be registered at the registry office before the plan comes into effect.

The first paragraph also applies to municipalities authorized by law to appropriate, without formality or indemnity, a right of ownership above, on or under an immovable, for public use.

CHAPTER II

AMENDMENTS TO CADASTRE

3024. The owner of a lot under a published title may submit to the minister responsible for the cadastre a plan, signed by him, to amend the plan of the lot by subdivision or otherwise; he may also request the numbering of a lot, the cancellation or replacement of the existing numbering or obtain a new numbering.

The minister may also, in case of error, correct a plan or change the number of a lot, supply any omitted number or cancel or replace the existing numbering. He shall notify the amendment to the owner registered in the land register and any person having caused his address to be registered. The notification must include reasons and be accompanied with extracts from the old and the new cadastral plans.

3025. The consent of the creditors and of the beneficiary of a declaration of family residence is required to obtain a cadastral amendment involving a renumbering.

The consent, given by notarial deed *en minute*, must be registered and transmitted, with a registration certificate, to the minister responsible for the cadastre.

3026. The registrar shall indicate in the register, under the number of the lot concerned, the nature of any amendment made to the plan which does not affect the cadastral number.

On opening a land file, required by a cadastral renumbering, he shall enter, as shown on the plan, the designation of the owner, the mode of acquisition of the immovable and the registration number of the title; he shall also establish, where expedient, the correspondence between the old and the new numbers.

CHAPTER III

CARRY-OVER OF RIGHTS

3027. The deposit of a plan giving rise to the opening of a land file requires the carry-over of the rights affecting the new lot.

The carry-over is effected before the registration on the land file of the first alienation *inter vivos* of the lot or of the first conventional hypothec. The registrar shall effect the carry-over of rights, in accordance with a report updating the land file of the lot or with a judgment determining the rights affecting the lot.

Rights which are not so carried over to the land file are extinguished.

3028. In territory with cadastral survey, no alienation *inter vivos* or conventional hypothec may be published in the land register unless the rights affecting the lot have been carried over.

The opening, where permitted, of the land file of an immovable corresponding to a part of lot gives rise, before any other entry is made, to the carry-over of the rights affecting that part of the lot, effected in accordance with the procedure applicable to a new lot.

3029. The updating report of a land file is made by notarial deed *en minute* and in accordance with the standards prescribed by regulation.

In preparing the report, the notary is bound to verify all published rights which affect the lot, examine the location certificate, if any, and verify, as far as possible, the capacity of the parties to the instruments registered against the lot.

3030. The updating report must indicate the subsisting rights which should be carried over to the land file, and those which are uncertain or are extinguished otherwise than by cancellation, and shall mention the entries in the index of addresses which correspond to those rights; the report must contain reasons.

The updating report shall also, where possible, include the addresses of the holders of uncertain rights.

The report forms part of the records of the registry office.

3031. The registrar shall carry over the subsisting rights to the land file if, according to the updating report, they raise no doubts; he shall also, specifying the provisional nature of the entry, carry over the rights held to be uncertain in the report, indicating opposite each right the reason stated in the report. The carry-over of a right includes that of the registration number of the corresponding address, and of the registration number of the updating report.

The registrar shall notify the persons whose rights are uncertain of the deposit of the report; he shall inform them that if, before the lapse of three years they have not instituted legal action to challenge the report or to obtain confirmation of their right, he will cancel the provisional entries by virtue of his office.

The notification shall be made by public notice if the addresses of the persons to whom it must be made are unknown; the cost shall be charged to the person requiring that the rights be carried over.

3032. Service of the judicial demand served on the registrar by the holder of an uncertain right gives rise, as a matter of course and without charge, to an advance entry of the demand in the land register.

The advance entry and the related uncertain right shall be cancelled on the filing of a judgment declaring the suit perempted.

CHAPTER IV

ALIENATION OF PARTS OF LOTS

3033. Rights set forth in a document evidencing the alienation *inter vivos* of part of a lot cannot be registered in the land register until, by amendment, that part is assigned a separate cadastral number, or is amalgamated with a contiguous lot, and until notice of the amendment is filed.

3034. On the recommendation of the minister responsible for the cadastre, the Government, by order and on the conditions it determines, may allow registration in the land register of the alienation of part of a lot situated in an agricultural zone established

under the Act to preserve agricultural land, or situated over 345 kilometres from the registry office of the registration division in which the lot is situated.

The order shall be published in the *Gazette officielle du Québec*; it comes into force on such date after its publication as is fixed therein.

3035. The registrar shall transmit to the minister responsible for the cadastre a copy of any document evidencing an alienation registered by him in the land register on the authority of the order.

On receipt of the document, the minister shall prepare the amendment providing a separate cadastral number for each part of a lot resulting from the alienation. Notice of deposit of the plan must be published.

TITLE FIVE

CANCELLATION

CHAPTER I

GROUNDS FOR CANCELLATION

3036. Cancellation may be by agreement or, failing that, judicial; it may also be legal.

3037. The registration of a right is cancelled with the consent of the holder of, or beneficiary under, that right.

Nevertheless, the registration of a hypothec which, according to the registers, is extinguished, and the registration of an address which no longer has effect may be cancelled by the registrar by virtue of his office. The cancellation shall give reasons and be dated. Notwithstanding the foregoing, hypothecs securing an emphyteutic rent, a constituted ground rent, a life-rent or a life-usufruct, hypothecs given in favour of the Office du crédit agricole du Québec, hypothecs in favour of the attorney of creditors to secure payment of obligations or other debt securities cannot be cancelled by the registrar by virtue of his office.

3038. The registration of the legal hypothec of persons having participated in the construction or renovation of an immovable shall be cancelled, on the application of any interested person, where no action has been brought within six months after the date of registration.

However, where an action has been brought and published, cancellation is obtained by registering the judgment dismissing the action or ordering the cancellation, or by filing a certificate of the clerk of court attesting that the action has been discontinued.

3039. Registration of a declaration of family residence is cancelled, on the application of any interested person, only in the following cases: where the spouses consent, where one of the spouses has died and his succession is liquidated, where the spouses are separated from bed and board or are divorced, where the marriage has been annulled, or where the immovable has been alienated with the consent of the spouses or by leave of the court.

3040. The court may order the cancellation of a registration effected without right or irregularly, or on the basis of a void title or a title irregular as to form or where the registered right has been annulled, rescinded, resiliated or extinguished by prescription or otherwise.

It may also order cancellation where the immovable against which a declaration of family residence that had been registered has ceased to be used for that purpose.

3041. The court may also order cancellation of the registration of a judgment having become *res judicata* which rectifies or annuls a registration, where that judgment detrimentally affects the rights of a third person in good faith who, relying on the registers, has acquired, by onerous title, a right in the property concerned, or the rights of those acquiring from him, even by particular title.

3042. Total acquittance of a debt entails consent to its cancellation. Partial acquittance entails consent to only an equivalent reduction.

The creditor is bound to register the acquittance if he receives a sufficient amount to pay the registration fee and mailing costs; he cannot claim any other amount, notwithstanding any stipulation to the contrary.

3043. Reduction of a hypothec securing a claim to be paid with a sum of money deposited for that purpose is made by registering the judgment declaring the tender to be valid and determining, where applicable, the person entitled to the sum of money deposited, or by registering the judgment authorizing, at the debtor's request, the reduction of the hypothec and its transfer onto the property tendered or deposited.

CHAPTER II

CERTAIN CASES OF CANCELLATION

3044. Registration of a life annuity or of a hypothec securing it cannot be cancelled without the consent of the holder or beneficiary; after his death, the person requiring the cancellation must file the certificate of death and a solemn declaration as to the identity of the deceased.

3045. Registration of a hypothec in favour of the state is cancelled or reduced by filing a certificate of the Attorney General or Deputy Attorney General of Québec, or of a person designated by the Attorney General, stating that the hypothec is extinguished or reduced.

It is also cancelled by filing a certificate of the Minister or Deputy Minister of Revenue or of a person designated by the Minister of Revenue, stating that the hypothec is extinguished or reduced, if the hypothec was created by virtue of an Act under the administration of that Minister.

It may further be cancelled by filing an order of the Government, certified by the clerk of the Executive Council.

3046. Registration of rights extinguished by the exercise of hypothecary rights or by forced sale are cancelled following registration of the sale or taking in payment. However, a judgment ordering surrender cannot be published before it has become *res judicata*. All registrations of minutes of seizure, prior notices of sale, notices of intention to pursue a remedy or exercise of a right and any notice requiring abandonment of the taking in payment under the Book on Preferences and Hypothecs, are thereupon cancelled.

Where the sale is not proceeded with, registration of minutes of seizure and notices is cancelled only upon the filing of a certificate attesting to that fact issued by the clerk of the court or by the person designated to proceed with the sale.

3047. Registration of a notice of sale for non-payment of immovable taxes and of the sale itself are cancelled following the registration of the deed of sale entered into by the municipal or school authority or by the instrument evidencing the redemption of the immovable.

Registration of the prior notice of sale for non-payment of immovable taxes is also cancelled following the production of the list of immovables that have not been sold.

3048. Registration of a real right exercisable on state resources is cancelled when the minister responsible for the Act governing the right notifies the registrar of the abandonment or revocation of the right not exempt from registration.

The notice must contain the designation of the abandonned or revoked right and identify the land file concerned; the abandonment or revocation shall be entered on the land file concerned and on the land file of the immovable on which the right was exercised.

CHAPTER III

PROCEDURE AND EFFECTS OF CANCELLATION

3049. Requisitions to register a correction, cancellation or reduction of an entry in a register shall be made in the form prescribed by regulation.

3050. A requisition based on a judgment ordering the cancellation of a published right is not admissible unless the judgment has acquired force as a final judgment (*res judicata*).

Provisional execution of a judgment relating to the correction or cancellation of a registration is not admissible.

The clerk of the court is bound to issue a certificate attesting that no appeal lies from the judgment or that, the time for appeal having expired, no appeal has been taken or that, on the lapse of thirty days from the date of judgment, no demand for revocation of judgment had been filed.

3051. Consent to cancellation of the registration of a principal right authorizes cancellation of the registration of rights accessory to that right and of all references to those rights, provided that those references are identified by the registration number of the document evidencing such rights.

3052. Registration of a cancellation made without right or by error may be cancelled by order of the court on the motion of any interested person.

Registration of the order shall not affect the rights of a third person in good faith who published his right after the cancellation made without right or following an error.

BOOK TEN

PRIVATE INTERNATIONAL LAW

TITLE ONE

GENERAL PROVISIONS

3053. The rules contained in this Book apply subject to those rules of law in force in Québec which are applicable by reason of their particular object.

3054. Where a State comprises several territorial units having different legislative jurisdictions or several legal systems applicable to different categories of persons, each territorial unit or each legal system is regarded as a State.

Any reference to the law of a State is a reference to the rules prescribed by the law in force in that State; in the absence of such rules, any such reference is a reference to the law most closely connected with the situation.

3055. Characterization is made according to the legal system of the court seized of the case; however, where a legal institution is unknown to the court or known to it under a different designation or with a different content, foreign law may be taken into account.

3056. Where legitimate and manifestly preponderant interests from the standpoint of Québec law so require, a mandatory provision of the law of another State with which the situation is closely connected may be taken into account.

In deciding whether to do so, consideration must be given to the purpose of the provision and the consequences of its application from the standpoint of Québec law.

3057. The provisions of the law of a foreign State do not apply if their application would be manifestly inconsistent with public order as understood in international relations.

3058. Exceptionally, the law designated by this Book is not applicable if, in the light of all attendant circumstances, it is clear that

the situation is only remotely connected with that law and is much more closely connected with the law of another State. This provision does not apply where the law is designated in a legal instrument.

TITLE TWO

CONFLICT OF LAWS

CHAPTER I

PERSONAL STATUS

SECTION I

GENERAL PROVISIONS

3059. The status and capacity of a natural person are governed by the law of his domicile.

The status and capacity of a legal person are governed by the law of the State under which it was formed subject, with respect to its activities, to the law of the place where they are carried on.

3060. In cases of emergency or serious inconvenience, the law of the court seized of the case may be applied provisionally to ensure the protection of a person or of his property.

SECTION II

SPECIAL PROVISIONS

§ 1.—*Incapacity*

3061. Protective supervision of persons of full age and tutorship to minors are governed by the law of the domicile of each person subject thereto.

Whenever a minor or a person of full age under protection domiciled outside Québec possesses property in Québec or has rights to be exercised and the law of his domicile does not provide for him to have a representative, a tutor or a curator may be appointed to represent him in all cases where a tutor or a curator may represent a minor or a person of full age under protection under the laws of Québec.

3062. A party to a juridical act who is incapable under the law of the State of his domicile cannot invoke his incapacity if he was

capable under the law of the State in which the other party was domiciled when the act was performed in that State, unless the other party was or should have been aware of the incapacity.

3063. A legal person who is a party to a juridical act cannot invoke restrictions upon the power of representation of the persons acting for it if the restrictions did not exist under the law of the State in which the other party was domiciled when the act was performed in that State, unless the other party was or should have been aware of the restrictions by virtue of his position with or relationship to the party invoking them.

§ 2.—*Marriage*

3064. Marriage is governed with respect to its intrinsic validity by the law applicable to the status of each of the intended spouses; with respect to the formalities of its solemnization, it is governed by the law of the place where it is performed.

3065. The effects of marriage, particularly, those which are binding on all spouses regardless of their matrimonial regime, are subject to the law of the domicile of the spouses.

Where the spouses are domiciled in different States, the applicable law is the law of their common residence or, failing that, the law of their last common residence or, failing that, the law of the place of solemnization of the marriage.

§ 3.—*Separation from bed and board*

3066. Separation from bed and board is governed by the law of the domicile of the spouses.

Where the spouses are domiciled in different States, the applicable law is the law of their common residence or, failing that, the law of their last common residence or, failing that, the law of the court seized of the case.

The effects of separation from bed and board are subject to the law governing the separation.

§ 4.—*Filiation by blood or through adoption*

3067. Filiation is established in accordance with the law of the domicile or nationality of the child or of either of his parents, at the time of the child's birth, whichever is more beneficial to the child.

The effects of filiation are subject to the law of the domicile of the child.

3068. The rules respecting consent to the adoption and the eligibility of the child for adoption are those provided by the law of his domicile.

The effects of adoption are subject to the law of the domicile of the adopter.

3069. Custody of the child is governed by the law of his domicile.

§ 5.—*Obligation of support*

3070. The obligation of support is governed by the law of the domicile of the creditor. However, where the creditor cannot obtain support from the debtor under that law, the applicable law is that of the domicile of the debtor.

3071. No claim of support of a collateral relation or a person connected by marriage is admissible if, under the law of his domicile, there is no obligation for the debtor to provide support to the plaintiff.

3072. The obligation of support between spouses who are divorced or separated from bed and board or whose marriage has been declared null is governed by the law applicable to the divorce, separation from bed and board or to the declaration of nullity.

CHAPTER II

STATUS OF PROPERTY

SECTION I

GENERAL PROVISIONS

3073. Real rights and their publication are governed by the law of the place where the property concerned is situated.

SECTION II

SPECIAL PROVISIONS

§ 1.—*Successions*

3074. Succession to movable property is governed by the law of the last domicile of the deceased; succession to immovable property is governed by the law of the place where the property is situated.

However, a person may designate, in a will, the law applicable to his succession, provided it is the law of the State of his nationality or of his domicile at the time of the designation or of his death or that of the place where an immovable owned by him is situated, but only with regard to that immovable.

3075. The designation of a law applicable to the succession has no effect to the extent that the law designated does not admit of such option or deprives a spouse or a child of the deceased, to a large degree, of a succession right to which, but for such designation, he would have been entitled.

In addition, the designation has no effect to the extent that it affects particular inheritance regimes to which certain categories of property are subject under the law of the State in which they are situated because of economic, family or social considerations.

3076. To the extent that the applicable law is the law of Québec or the law determined under this subsection, and that its enforcement is impossible in respect of property situated outside Québec, corrective measures may be applied to property situated in Québec, in particular, by means of the restoration of shares, a new participation in the debts or a compensatory deduction established by a rectified partition.

3077. Where the heirs of a person domiciled outside Québec have rights to be exercised in Québec and certain categories of property of the succession are situated in Québec and the law governing the succession of the deceased does not provide for him to have an administrator or liquidator authorized to act in Québec, an administrator or a liquidator may be appointed under the law of Québec.

§ 2.—*Movable securities*

3078. The validity of a movable security is governed by the law of the State in which the property charged with it is situated at the time of creation of the security.

Publication and its effects are governed by the law of the State in which the property charged with the security is currently situated.

3079. Any movable property that is not intended to remain in the State in which it is situated may be charged with a security according to the law of the State for which it is destined; the security may be published according to the law of that State, but publication has effect only if the property actually reaches the State within thirty days of the creation of the security.

3080. A security published according to the law of the State where the property was situated at the time of creation of the security will be deemed to be published in the new place where the property is situated, from the first publication, if publication in that place is effected before the occurrence of any of the following events, whichever occurs first:

(1) The day on which publication in the State where the property was situated at the time of creation of the security ceases to have effect,

(2) The expiry of thirty days from the time the property reaches its new destination,

(3) The expiry of fifteen days from the time the creditor is advised of the new situation of the property.

However, the security cannot be set up against a buyer who has acquired the property in the ordinary course of the activities of the grantor.

3081. A security attached to corporeal movable property ordinarily used in more than one State or a security attached to an incorporeal movable property is governed by the law of the State where the grantor is domiciled at the time of creation of the security.

However, the provision contained in the first paragraph does not apply to a security attached to a debt or an incorporeal movable property established by a title in bearer form or to a security published by the holding of the title exercised by the creditor.

3082. A security which, when it is created, is governed by the law of the State where the grantor is then domiciled and which has been published will be deemed to have been published in the place of the new domicile of the grantor, from the first publication, provided it is published before any of the following events, whichever occurs first:

(1) The day on which publication in the State where the grantor was formerly domiciled ceases to have effect,

(2) The expiry of thirty days from the date the grantor set up his new domicile,

(3) The expiry of fifteen days from the time the creditor was advised of the change of domicile of the grantor.

However, the security cannot be set up against a buyer who has acquired the property in the ordinary course of the activities of the grantor.

§ 3.—*Trusts*

3083. Where no law is expressly designated by, or may be inferred with certainty from, the terms of the instrument creating a trust, or where the law designated does not admit of such option, the applicable law is that with which the trust is most closely connected.

To determine the applicable law, reference shall be made in particular to the place of administration of the trust, the place where the trust property is situated, the residence or the establishment of the trustee, the objects of the trust and the places where they are to be fulfilled.

3084. Any severable aspect of a trust, particularly its administration, may be governed by a different law.

The law governing the trust determines whether the question to be resolved concerns the validity or the administration of the trust; it also determines whether that law or the law governing a severable aspect of the trust may be replaced and, if so, the conditions of replacement.

CHAPTER III

STATUS OF OBLIGATIONS

SECTION I

GENERAL PROVISIONS

§ 1.—*Form of juridical acts*

3085. The form of a juridical act is governed by the law of the place where it is made.

A juridical act is nevertheless valid if it is made in the form prescribed by the law applicable to the content of the act, by the law of the place where the property which is the object of the act is situated when it is made or by the law of the domicile of one of the parties when the act is made.

A testamentary disposition may be made in the form prescribed by the law of the domicile or nationality of the testator either at the time of the disposition or at the time of his death.

However, every contract whose object is an immovable is subject to the rules on form prescribed by the law applicable in the place where the immovable is situated.

3086. An act may be made before a diplomatic or consular agent or by a delegate-general or delegate of Québec abroad acting within his powers under the law by which he is appointed and according to the forms prescribed by that law, subject to the recognition of those powers by the law of the place where he performs his duties.

3087. An act may be made outside Québec before a Québec notary if it pertains to a real right the object of which is situated in Québec or if one of the parties is domiciled in Québec.

§ 2.—*Content of juridical acts*

3088. A juridical act, whether or not it contains a foreign element is governed by the law expressly designated in the instrument or the designation of which may be inferred with certainty from the terms of the act.

A juridical act containing no foreign element remains, nevertheless, subject to the mandatory provisions of the law of the State in which all the elements contained in the act are situated.

A system of law may be expressly designated as applicable to the whole or a part only of a juridical act.

3089. If no law is designated in the act or if the law designated invalidates the juridical act, the courts shall apply the law of the State with which the act is most closely connected, in view of its nature and the attendant circumstances.

3090. A juridical act is presumed to be most closely connected with the law of the State where the party who is to perform the prestation which is characteristic of the act has his residence or, if the act is made in the ordinary course of business of an enterprise, his establishment.

SECTION II

SPECIAL PROVISIONS

§ 1.—*Sale*

3091. If no law is designated by the parties, the sale of corporeal movable property is governed by the law of the State where the seller has his residence or, if the sale is made in the ordinary course of business of an enterprise, his establishment, at the time of formation of the contract. However, the sale is governed by the law of the State in which the buyer has his residence or his establishment at the time of formation of the contract in any of the following cases:

(1) Negotiations have taken place and the contract has been formed in that State;

(2) The contract provides expressly that delivery must be made in that State;

(3) The contract is formed on terms determined mainly by the buyer, in response to a call for tenders.

If no law is designated by the parties, the sale of immovable property is governed by the law of the State where it is situated.

3092. Failing any designation by the parties, a sale at auction or on a stock exchange is governed by the law of the State where the auction takes place or the exchange is situated.

§ 2.—*Mandate and administration of the property of others*

3093. Notwithstanding any agreement to the contrary, the existence and scope of the powers of a mandatary or an administrator of the property of others in his relations with a third person and the conditions under which his personal liability or that of the mandator or the beneficiary of the administration may be incurred are governed by the law of the State where the mandatary or administrator acted, if he or the mandator, the beneficiary or the third person has his domicile or residence in that State or, failing that, by the law with which the situation is most closely connected.

§ 3.—*Consumer contract*

3094. The designation by the parties of the law applicable to the consumer contract cannot result in depriving the consumer of the protection to which he is entitled under the mandatory provisions of the law of the State where he has his residence if the formation of the contract was preceded by a special offer or advertisement in that State and the consumer took all the necessary steps for the formation of the contract in that State or where the order was received from the consumer in that State.

The same rule also applies where the consumer was induced by the other contracting party to travel to a foreign State for the purpose of forming the contract.

If no law is designated by the parties, the law of the place where the consumer has his residence is, in the same circumstances, applicable to the consumer contract.

§ 4.—*Contract of employment*

3095. The designation by the parties of the law applicable to the contract of employment cannot result in depriving the worker of the protection to which he is entitled under the mandatory provisions of the law of the State where the worker habitually carries on his work, even if he is on temporary assignment in another State or, if the worker does not habitually carry on his work in any one State, the mandatory provisions of the law of the State where his employer has his domicile or establishment.

If no law is designated by the parties, the law of the State where the worker habitually carries on his work or the law of the State where his employer has his domicile or establishment is, in the same circumstances, applicable to the contract of employment.

§ 5.—*Contract of non-marine insurance*

3096. Notwithstanding any agreement to the contrary, a contract of insurance respecting property or an interest situated in Québec or subscribed in Québec by a person resident in Québec is governed by the law of Québec if the policyholder applies therefor in Québec or the insurer signs or delivers the policy in Québec.

Similarly, a contract of group insurance is governed by the law of Québec where the participant has his residence in Québec at the time he becomes a participant.

Any sum due under a contract of insurance governed by the law of Québec is payable in Québec.

§ 6.—*Assignment of claim*

3097. The assignability of a claim and relations between the assignee and the assigned debtor are governed by the law governing relations between the assigned debtor and the assignor.

§ 7.—*Arbitration*

3098. Failing any designation by the parties, an arbitration agreement is governed by the law applicable to the principal contract or, where that law invalidates the agreement, by the law of Québec if arbitration takes place in Québec

§ 8.—*Matrimonial regime*

3099. The law applicable to a conventional matrimonial regime is determined according to the general rules applicable to the content of juridical acts.

3100. The matrimonial regime of spouses having married without entering into matrimonial agreements is governed by the law of their domicile at the time of the solemnization of their marriage.

If the spouses are at that time domiciled in different States, the applicable law is the law of their first common residence or, failing that, the law of their common nationality or, failing that, the law of the place of solemnization of the marriage.

3101. The validity of any agreed change to a matrimonial regime is governed by the law of the domicile of the spouses at the time of the change.

If the spouses are at that time domiciled in different States, the applicable law is the law of their common residence or, failing that, the law governing their matrimonial regime.

§ 9.—*Certain other sources of obligation*

3102. Obligations based on management of the business of others, reception of a thing not due or unjustified enrichment are governed by the law of the place of occurrence of the act from which they derive.

§ 10.—*Civil liability*

3103. The obligation to make reparation for injury caused to another is governed by the law of the State where the injurious act occurred. However, if the injury appeared in another State, the law of the latter State is applicable unless the person who committed the injurious act proves that he could not have foreseen the occurrence of the damage.

In any case where the person who committed the injurious act and the victim have their domiciles or residences in the same State, the law of that State applies.

3104. Where an obligation to make reparation for injury arises from nonperformance of a contractual obligation, claims based on the nonperformance are governed by the law applicable to the contract.

3105. The liability of the manufacturer of a movable property is governed, at the option of the victim,

(1) by the law of the State where the manufacturer has his establishment or, failing that, his residence, or

(2) by the law of the State where the movable property was acquired.

3106. The application of the rules of this Code is imperative in matters of civil liability for damage suffered in or outside Québec as a result of exposure to or the use of raw materials, whether processed or not, originating in Québec.

§ 11.—*Evidence*

3107. Evidence is governed by the law applicable to the merits of the dispute, subject to any rules of the court seized of the case which are more favourable to the establishment of evidence.

§ 12.—*Prescription*

3108. Prescription is governed by the law applicable to the merits of the dispute.

CHAPTER IV

STATUS OF PROCEDURE

3109. Procedure is governed by the law of the court seized of the case.

3110. Arbitration proceedings are governed by the law of the State where arbitration takes place unless the law of another State has been designated by the parties.

TITLE THREE

INTERNATIONAL JURISDICTION OF QUÉBEC JUDICIAL AND ADMINISTRATIVE AUTHORITIES

CHAPTER I

GENERAL PROVISIONS

3111. In the absence of any special provision, the Québec judicial or administrative authorities have jurisdiction when the defendant is domiciled in Québec.

3112. Even though a Québec judicial or administrative authority has jurisdiction to hear a dispute, it may exceptionally and on an application by a party, decline jurisdiction if it considers that the judicial or administrative authorities of another State are in a better position to decide.

3113. Even though a Québec authority has no jurisdiction to hear a dispute, it may hear it, if the dispute has a sufficient connection with Québec, where proceedings cannot possibly be instituted outside Québec or where the institution of such proceedings outside Québec cannot reasonably be required.

3114. On the application of a party, a Québec authority shall stay its ruling on an action brought before it if another action, between the same parties, based on the same facts and having the same object is pending before a foreign authority, provided that the latter action can result in a decision which can be recognized in Québec, or if such a decision has already been rendered by a foreign authority.

3115. A Québec authority may order provisional or conservatory measures even if it has no jurisdiction over the merits of the dispute.

3116. Where a Québec authority has jurisdiction to rule on the principal demand, it also has jurisdiction to rule on an incidental demand or a cross demand.

3117. In cases of emergency or serious inconvenience, Québec authorities may also take such measures as they consider necessary for the protection of the person or property of a person domiciled abroad but present in Québec.

CHAPTER II

SPECIAL PROVISIONS

SECTION I

PERSONAL ACTIONS OF AN EXTRAPATRIMONIAL NATURE

3118. A Québec judicial or administrative authority has jurisdiction to hear personal actions of an extrapatrimonial nature when one of the persons concerned is domiciled in Québec.

3119. A Québec judicial or administrative authority has jurisdiction to rule on the custody of a child domiciled in Québec.

3120. A Québec judicial or administrative authority has jurisdiction to decide cases of support when one of the parties has his domicile or residence in Québec.

3121. A Québec judicial or administrative authority has jurisdiction in matters relating to nullity of marriage when one of the spouses has his domicile or residence in Québec or when the marriage was solemnized in Québec.

3122. As regards the effects of marriage, particularly those which are binding on all spouses, regardless of their matrimonial regime, a Québec judicial or administrative authority has jurisdiction when one of the spouses has his domicile or residence in Québec.

3123. A Québec judicial or administrative authority has jurisdiction to rule on separation from bed and board when one of the spouses has had his domicile or residence in Québec for one year at the time of the institution of the proceedings.

3124. A Québec judicial or administrative authority has jurisdiction to rule on an application for review of a foreign judgment which can be recognized in Québec, respecting support, if one of the parties has his domicile or residence in Québec.

3125. A Québec judicial or administrative authority has jurisdiction in matters of filiation if the child or one of his parents is domiciled in Québec.

It has jurisdiction in matters of adoption if the child or plaintiff is domiciled in Québec.

SECTION II

PERSONAL ACTIONS OF A PATRIMONIAL NATURE

3126. In personal actions of a patrimonial nature, a Québec judicial or administrative authority has jurisdiction where

(1) the defendant has his domicile or his residence in Québec;

(2) the defendant is a legal person, is not domiciled in Québec but has an establishment in Québec, and the dispute relates to its activities in Québec;

(3) a fault was committed in Québec, damage was suffered in Québec or one of the obligations arising from a contract was to be performed in Québec;

(4) the parties have by agreement submitted to a Québec court all existing or future disputes between themselves arising out of a specified legal relationship;

(5) the defendant submits to the jurisdiction of a Québec court.

However, a Québec judicial or administrative authority has no jurisdiction where the parties, by agreement, have chosen to submit all existing or future disputes between themselves relating to a specified legal relationship to a foreign authority or to an arbitrator, unless the defendant submits to the jurisdiction of the Québec judicial or administrative authority.

3127. A Québec judicial or administrative authority also has jurisdiction to hear an action involving a consumer contract or a contract of employment if the consumer or worker has his domicile or residence in Québec; the waiver of such jurisdiction by the consumer or worker cannot be set up against him.

3128. A Québec judicial or administrative authority has jurisdiction to hear an action based on a contract of insurance where the holder, the insured or the beneficiary of the contract is domiciled or resident in Québec, the contract is related to an insurable interest situated in Québec or the loss took place in Québec.

3129. A Québec judicial or administrative authority has exclusive jurisdiction to hear in first instance all actions founded on liability under article 3106.

SECTION III

REAL ACTIONS

3130. A Québec judicial or administrative authority has jurisdiction over a real action if the property in dispute is situated in Québec.

3131. A Québec judicial or administrative authority has jurisdiction in matters of succession if the succession is opened in Québec, the defendant is domiciled in Québec or the deceased had elected that Québec law should govern his succession.

It also has jurisdiction if the property of the deceased is situated in Québec and a ruling is required as to the devolution or transmission of the property.

3132. A Québec judicial or administrative authority has jurisdiction in matters of matrimonial regime in the following cases:

(1) the regime is dissolved by the death of one of the spouses and the judicial or administrative authority has jurisdiction in respect of the succession of that spouse;

(2) the object of the proceedings relates only to property situated in Québec.

In other cases, a Québec judicial or administrative authority has jurisdiction if one of the spouses has had his domicile or residence in Québec for not less than one year before the date of institution of the proceedings.

TITLE FOUR

RECOGNITION AND ENFORCEMENT OF FOREIGN DECISIONS AND JURISDICTION OF FOREIGN JUDICIAL AND ADMINISTRATIVE AUTHORITIES

CHAPTER I

RECOGNITION AND ENFORCEMENT OF FOREIGN DECISIONS

3133. A Québec judicial or administrative authority shall recognize and, where applicable, declare enforceable any judicial or administrative decision rendered outside Québec unless the defendant proves that

(1) the authority of the State where the decision was rendered had no jurisdiction under the provisions of this Title;

(2) the decision is subject to ordinary review or is not final or enforceable at the place where it was rendered;

(3) the decision was rendered in contravention of the fundamental principles of procedure;

(4) a dispute between the same parties, based on the same facts and having the same object has given rise to a decision rendered in Québec, whether it has acquired the authority of a final judgment (*res judicata*) or not, or is pending before a Québec authority, in first instance, or has been decided in a third State and the decision meets the necessary conditions for recognition in Québec;

(5) the outcome of a foreign decision is manifestly inconsistent with public order as understood in international relations.

3134. A decision rendered by default cannot be recognized or declared enforceable unless the plaintiff proves that the procedure initiating the proceedings was duly served on the defaulting party in accordance with the law of the place where the decision was rendered.

However, the authority may refuse recognition or enforcement if the defaulting party proves that, owing to the circumstances, he was unable to learn of the procedure initiating the proceedings or was not given sufficient time to offer his defence.

3135. Recognition or enforcement cannot be refused on the sole ground that the authority of origin applied a law different from the law that would be applicable under the rules contained in this Book.

3136. A Québec authority shall confine itself to verifying whether the decision in respect of which recognition or enforcement is sought meets the requirements prescribed in this Title, without entering into any examination of the merits of the decision.

3137. Recognition or enforcement may be granted partially if the decision deals with several claims that can be dissociated.

3138. A decision rendered outside Québec awarding periodic payments of support may be recognized and declared enforceable in respect of both payments due and payments to become due.

3139. Where a foreign decision orders a debtor to pay a sum of money expressed in foreign currency, a Québec authority shall convert the sum into Canadian currency at the rate of exchange prevailing on the day the decision became enforceable at the place where it was rendered.

The determination of interest payable under a foreign decision is governed by the law of the authority that rendered the decision until its conversion.

3140. A settlement enforceable in the place of origin is enforceable and, as the case may be, declared to be enforceable in Québec on the same conditions as a judicial decision, to the extent that those conditions apply to the settlement.

CHAPTER II

JURISDICTION OF FOREIGN JUDICIAL AND ADMINISTRATIVE AUTHORITIES

SECTION I

GENERAL PROVISIONS

3141. In the absence of any special provision, the jurisdiction of foreign judicial or administrative authorities is established in accordance with the rules on jurisdiction applicable to Québec authorities under Title Three of this Book, adapted as required.

3142. On the application of the defendant, the jurisdiction of a foreign judicial or administrative authority shall not be recognized by Québec authorities in the following cases:

(1) where, by reason of the subject matter or an agreement between the parties, Québec law grants exclusive jurisdiction to its authorities to hear the action which gave rise to the foreign decision;

(2) where, by reason of the subject matter or an agreement between the parties, Québec law recognizes the exclusive jurisdiction of another foreign authority;

(3) where Québec law recognizes an agreement by which exclusive jurisdiction has been conferred upon an arbitrator.

SECTION II

PERSONAL ACTIONS OF AN EXTRAPATRIMONIAL NATURE

3143. The jurisdiction of a foreign authority is recognized in matters of filiation where the child or either of his parents is domiciled in that State or is a national thereof.

3144. The jurisdiction of a foreign authority is recognized in actions relating to divorce if one of the spouses had had his domicile in the State where the decision was rendered or had had his residence in that State for at least one year before the institution of the proceedings, or if the spouses are nationals of that State or, again, if the decision has been recognized in that State.

FINAL PROVISIONS

This Code replaces the Civil Code of Lower Canada adopted by chapter 41 of the statutes of 1865 of the Legislature of the Province of Canada, An Act respecting the Civil Code of Lower Canada. It also replaces section 1 of chapter 39 of the statutes of 1980, An Act to establish a new Civil Code and to reform family law, as amended, and chapter 18 of the statutes of 1987, An Act to add the reformed law of persons, successions and property to the Civil Code of Québec.

This Code will come into force on the date to be fixed by the Government, in accordance with the Act respecting the implementation of the Civil Code reform.

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