NATIONAL ASSEMBLY

THIRTY-SECOND LEGISLATURE FOURTH SESSION

Bill 58

An Act to add the reformed law of property to the Civil Code of Québec

First reading

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EXPLANATORY NOTES

The object of this bill is to reform the law of property and to add Book Four, on property, to the Civil Code of Québec.

Book Four his seven titles. The first title deals with the different kinds of property and the appropriation of property. It has four chapters, dealing, respectively, with the kinds of property, that is, immoveables and movables, the relations between property and other property, the relations between property and the persons having rights in it or possessing it, and certain de facto relationships concerning property. This fourth chapter sets out the rules on possession and on the acquisition of vacant property, ownerless property and property that has been lost or abandoned.

Title Two deals with ownership. The first chapter defines the nature and extent of the right of ownership, and the second sets out the rules on immovable and movable accession. The third and final chapter lays down special rules on immovable ownership, such as those on boundary lines of land and their determination, waters, trees, access to and protection of the another's land views, right of way, and fences and common dividing fences.

Title Three is devoted to the principal modes of ownership. The first chapter contains general provisions defining the nature of undivided co-ownership and of so-called divided co-ownership. The three remaining chapters set out the systems of rules undivided co-ownership, divided co-ownership and superficial ownership.

Title Four regulates the main dismemberments of the right of ownership. Its four chapters deal successively with usufruct, use, servitude and emphytensis.

Title Five establishes rules on restriction of the free disposition of property. The first gives the rules on the right of pre-emption, the second, those on stipulations inalienability, and the third, those concerning substitution.

Title Six deals with certain patrimoniums by appropriation. The first chapter defines the foundation. The second is devoted to the trust, and defines its nature, determines the various kinds of trusts and their duration, sets

forth the rules on the administration of a trust, and makes provision for changes to a trust and to a trust patrimonium, and for termination of a trust.

Lastly, Title Seven determines the rules on the administration of the property of others. The first chapter contains general provisions, while the second determines the scope of the activities of the administrator of the property of another according to the three kinds of administration, namely, safeguard, simple administration or full administration of another's property. The third chapter specifies the obligations of the administrator and the fourth sets out the rules regarding the causes of termination of administration, rendering of account and return of the property.

Bill 58

An Act to add the reformed law of property
to the Civil Code of Québec

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. Book Four is added to the Civil Code of Québec, established by chapter 39 of the statutes of 1980, after article 944 at the end of Book Three, "Successions", and reads as follows:

"BOOK FOUR

PROPERTY

TITLE ONE

KINDS OF PROPERTY AND ITS APPROPRIATION

CHAPTER I

KINDS OF PROPERTY

945. Property, whether corporeal or incorporeal, is divided into immovables and movables.

946. Land, plants and minerals, as long as they are not separated or extracted from the land and structures and works fixed in the ground, together with all the movables integrated with them, are immovables.

Notwithstanding the foregoing, fruits and other products of the soil may be considered to be movables when they are the principal object of an act of alienation.

947. 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.

948. Movables which, without losing their individuality, are placed in or incorporated with an immovable for a permanency are part of the immovable if their owner places or incorporates them for the purpose of using or operating his immovable.

The mere appropriation of movables for the economic operation of an immovable, without being physically and firmly attached, does not create a presumption that the property is immovable unless its destination is stated in an instrument.

949. A real right in an immovable, as well as any action to assert such a right or to obtain possession of an immovable, is immovable.

950. Things which can be moved either by themselves or by an extrinsic force are movables.

951. Claims and other incorporeal rights attested by a bearer instrument and energy harnessed and put to use by man, whether its source is movable or immovable, are deemed corporeal movables.

952. Property that is neither described in this section nor qualified by law is presumed movable.

CHAPTER II

RELATIONS OF PROPERTY TO OTHER PROPERTY

953. Property, according to its relations to other property, is divided into capital, and fruits and revenues.

954. Property appropriated for a commercial undertaking, shares of the capital stock or common shares of a legal person, including stock dividends, property that produces fruits and revenues, the price of any disposal of capital or its reinvestment, and expropriation or insurance indemnities in replacement of capital, are capital.

Bonds and other loan certificates payable in cash and rights the exercise of which tends to increase capital property, such as the right to subscribe securities of a legal person or a trust, are also capital.

955. Fruits and revenues are everything produced by property without any alteration to its substance, everything procured by the use

of property according to its destined use and everything derived from the use of capital, such as the profit realized on business transactions.

They also include rights the exercise of which tends to increase the fruits and revenues of the property, such as a dividend option.

956. Fruits and revenues are natural, industrial or civil. Fruits spontaneously produced by the property, as well as the produce and increase of animals, are natural fruits; those produced by the cultivation or working of the property are industrial fruits.

Civil revenues are the sums of money yielded by or derived from property; they include, in particular, rents, interest, arrears of rent, dividends, sums received as consideration for the cancellation or renewal of a lease or for prepayment, or sums allotted or collected in similar circumstances.

CHAPTER III

PROPERTY AS RELATED TO PERSONS HAVING RIGHTS IN IT OR POSSESSION OF IT

957. A person, alone or with others, may hold a right of ownership, a dismemberment of the right of ownership or a security in a property, or have possession of the property.

A person also may hold or administer the property of others or be trustee of a patrimonium.

958. Certain property is not subject to appropriation, and its use, common to all, is governed by public statutes and, in certain respects, by this Code.

Certain other property, being ownerless, is not subject to any right, but may nevertheless be appropriated by occupancy if the person taking it does so with the intention of becoming its owner.

959. Bodies of water, whether flowing or still, and the air are things appropriated for common use; however, they may be considered to be an object of ownership if they are collected in man-made receptacles from which they cannot naturally escape.

960. Property belongs to the State or to persons or, in certain cases, may be the subject of a patrimonium by association.

Property of the State and property of public legal persons are governed by public law and, where the rules require to be completed, by this Code.

961. Ownership in property is acquired by contract, succession, occupancy, prescription, accession or any other mode provided by law.

Notwithstanding the first paragraph, no person may appropriate to himself, by occupancy, prescription or accession, property of the State or property of public legal persons that is appropriated for the public interest. Titles to such property are presumed.

962. Property confiscated under the law is, upon being confiscated, the property of the State or, in certain cases, of the public legal person authorized by law to confiscate it.

963. The beds of navigable and floatable lakes and watercourses, as well as sheets of water and underground streams, are owned by the State, subject to express provision of law or the instrument of concession.

Ownership of the riparian land carries with it ownership of the bed of non-navigable and non-floatable lakes and watercourses, subject to express provision of law or the instrument of concession, and except where ownership of the land was granted by the State between 9 February 1918 and 17 March 1919, in which case the State owns the bed.

964. Any person may travel on watercourses, lakes and ponds, provided he gains legal access to them, causes no prejudice to the rights of the riparian owners, and observes the conditions of use of the water.

CHAPTER IV

CERTAIN DE FACTO RELATIONS CONCERNING PROPERTY

SECTION I

POSSESSION

§ 1.—*The nature of possession*

965. Possession is the exercise in fact, by oneself or through 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.

966. To produce legal effects, possession must be peaceful, continuous, public and unequivocal.

967. A person having begun to detain property in the name of another or with recognition of a higher authority is presumed to continue to detain it in that capacity unless inversion of title is proved on the basis of unequivocal facts.

968. Merely facultative acts or acts of sufferance do not found possession.

969. The present possessor is presumed to have been in continuous possession from the time he came into possession.

Possession is continuous even if its exercise is temporarily prevented or interrupted.

970. Defective possession begins to produce effects only where the defect has ceased.

Successors, whatever may be their title, do not suffer from defects in the possession of their predecessor.

971. No person who appropriates or detains property illegally may ever invoke the effects of possession in respect of that property.

§ 2.—*Effects of possession*

972. 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.

973. Possession vests the possessor with the real right he is exercising if he complies with the rules on prescription.

974. A possessor in good faith need not render account of the fruits and revenues of the property, and he bears the costs of production.

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.

975. 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.

976. A possessor may be reimbursed or indemnified according to the rules under the heading of accession for the structures, plantations and works he has made.

SECTION II

ACQUISITION OF VACANT PROPERTY

§ 1.—*Ownerless property*

977. Property without an owner, such as animals in the wild, or formerly in captivity but returned to the wild, products of the sea or of hunting or fishing, except as provided in the statutes relating to those activities, and things voluntarily abandoned by their owner, is ownerless property.

Movable property of slight value or in a very deteriorated condition that is deliberated left in a public place, including a public road or a vehicle used for public transportation, is presumed abandoned.

978. An ownerless movable belongs to the person who appropriates to himself it by occupancy.

An abandoned movable, if no one appropriates it for himself, is owned by the municipality that collects it in its territory, or by the State.

979. An ownerless immovable is deemed to belong to the State. It may nevertheless become the property of a person by accession or prescription if the State does not have possession of it or does not declare itself the owner of it by a notice of the public curator deposited in the registry office of the place where the immovable is situated.

980. Ownerless property which belongs to the State is administered by the public curator, who shall dispose of it according to law.

981. Treasure belongs to the finder if he found it in his own movable or immovable property; if he found it in another person's property, one-half belongs to the other person and one-half to himself, unless he was acting for the other person.

§ 2.—*Lost or abandoned movables*

982. A movable that is lost or that is left in the hands of a third person or in a public place continues to belong to its owner.

The movable is not susceptible of acquisition by occupancy, but is susceptible of prescription, as is the price subrogated thereto.

983. The finder of property shall attempt to find its owner and, when he finds him, return it to him.

If the owner cannot be found, the finder, in order to acquire ownership of the property, or of the price subrogated to the property, by prescription, shall declare the find and, where required, hand it over for safekeeping to the public curator or to the municipality in whose territory he found it or, if he found it in a public place, to a person in charge of the place.

984. The holder of found goods property may sell it immediately if, after giving, in a newspaper circulated in the place where it was found, notice that it was found, allotting the interested persons at least two months to claim it, it remains unclaimed. He may also immediately sell found perishable goods.

The property is sold at public auction or by private sale if that is advantageous. A report of the sale is then made to the public curator and the price is remitted to him, less the cost of administration and alienation of the property.

985. The State or a municipality may sell, as found goods, movable property in its hands which was left by neglect in a public place, in the following cases:

1. the owner of the property, duly advised by the holder that it was found, fails to claim it within the two months or more allotted to him;

2. the owner, not having notified the holder of the loss, while it has not been possible to inform him that the property has been found, fails to claim it within six months of losing it;

3. the owner of the property claims it but neglects or refuses to reimburse the holder for the cost of administration of the property within two months of claiming it;

4. several persons claim the property as owner, but none of them establishes a clear title or takes legal action to establish it within the two months or more allotted to him;

5. a movable deposited in the office of a court is not claimed by its owner within two months of notice given him to fetch it or, if it has not been possible to give him any notice, within six months of the final judgment or of the discontinuance of the proceedings.

986. The holder of property entrusted to him for safekeeping, work or processing may dispose of it if it is not claimed within three months from completion of the work or the agreed time, after advising the interested person, to fetch it within an allotted time of not less than thirty days. If the property is of considerable value, the notice must be sent by registered letter and the allotted time must be at least six months.

The holder shall consign the proceeds of the sale of the unclaimed property, after deducting the cost of its administration and alienation and the value of the work done.

987. The owner of lost property or of property left by neglect may revendicate it within the prescribed time by offering to pay the cost of its administration. The holder of the property may retain it until payment.

If the property has been alienated, the owner's right is exercised against the price, less the cost of administration and alienation.

TITLE TWO

OWNERSHIP

CHAPTER I

NATURE AND EXTENT OF THE RIGHT OF OWNERSHIP

988. Ownership is the right of a person to use, enjoy and dispose of property fully and freely within the limits of the law and under such conditions of exercise as may be determined by law.

Ownership may be in various forms and fragments.

989. The ownership of property gives a right of accession in what is united to or incorporated with the property, from the time it becomes so.

990. The owner of the property acquires all the fruits and revenues of the property, but bears the costs of production.

991. The owner of the property assumes the risks of loss and deterioration.

992. Ownership of the soil carries with it ownership of what is above and what is below the surface, to the full height and depth expedient for the exercise of the right of ownership.

The owner may erect such buildings or works or make such plantations above or below the surface as he sees fit; he is obliged to respect the rights of ownership of the State in the mines, sheets of water and underground streams.

993. No owner may be compelled to transfer ownership except by expropriation according to law for public purposes and in consideration of a just and prior indemnity.

994. The owner of property has a right to revendicate it against any person having possession or detention of it without right, and may object to any trespass or to any use which he has not authorized or that is not authorized by law.

CHAPTER II

ACCESSION

SECTION I

IMMOVABLE ACCESSION

995. 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*

996. Structures, plantations or works on or beneath the surface of an immovable are presumed to have been made by the owner of the immovable at his own expense and to belong to him.

997. An owner of land who erects structures or works or makes plantations with materials which do not belong to him acquires ownership of the materials by accession, but is required to pay their value at the time the materials used were united or incorporated.

The original owner of the materials has no right to remove them nor any obligation to take them back.

998. An owner of land acquires ownership of the structures or works erected or plantations made on his immovable by a possessor, whether the outlays were necessary, useful or for amenities, according as they were made for the preservation or improvement of the immovable or for amenities for the possessor.

999. The owner shall preserve what is procured by necessary outlays and reimburse the amount of the outlays to the possessor, even if it no longer exists.

Notwithstanding the first paragraph, compensation may be claimed, after deducting production costs, for fruits and revenues collected if the possessor is in bad faith.

1000. The owner shall preserve what is procured by necessary outlays made by a possessor in good faith, if they still exist; he shall,

in such a case, as he elects, reimburse the possessor for the amount of the outlays or pay him compensation equal to the increase in value.

The owner may, on the same conditions, except the obligation to pay compensation, after deducting production costs, for fruits and revenues collected, preserve the expedient improvements made by the possessor in bad faith or, instead, compel him to remove them and to restore the premises to their former condition.

1001. The owner may compel the possessor to acquire the property and to pay him its estimated value if the useful outlays made are costly and extensive in relation to the value of the property.

1002. A possessor in good faith who has made outlays to procure amenities for himself may abandon them or remove them. If he abandons them and the owner manifests his intention to preserve them, he is entitled to their cost or the increase in value given to the immovable, whichever is less.

1003. The owner may compel the possessor in bad faith to remove amenities which he has procured for himself through outlays and to restore the premises to their former condition, or he may keep them without compensation.

1004. A possessor in good faith has a right to retain the immovable until the price or the compensation due to him for necessary and useful outlays is paid.

A possessor in bad faith has no right under this article except in respect of necessary outlays he has made.

1005. Outlays made for the benefit of an immovable by a person having detention of it are dealt with according to the rules prescribed for outlays made by a possessor in bad faith.

Notwithstanding the first paragraph, the person having detention of the property is under no compulsion to acquire it.

§ 2.—*Natural accession*

1006. 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.

1007. 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 land encroached upon.

No right exists under this article as regards accretions from the sea, which form part of the public domain.

1008. If, by sudden force, a watercourse carries away a large and recognizable part of a riparian property to a lower property or to the opposite bank, the owner of the part carried away may reclaim it.

The owner is obliged, on pain of forteiture, to reclaim the part carried away within one year after the owner of the land it has attached to takes possession of it.

1009. An island formed in the bed of a watercourse belongs to the owner of the bed.

1010. If, in forming a new branch, a watercourse cuts a riparian property and thereby forms an island, the owner of the riparian property retains the ownership of the island so formed.

1011. If a watercourse abandons its bed and forms a new one, the former bed belongs to the owners of the newly occupied land, each in proportion to the land which he has lost.

SECTION II

MOVABLE ACCESSION

1012. Where movables belonging to several owners have been intermingled or united in such a way as to no longer be 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.

1013. A person having worked on or processed material which does not belong to him acquires ownership of the new property if the work or processing is worth more than the material.

1014. The owner of a 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.

1015. A person obliged to return a new property may retain it until its owner pays him the compensation he owes him.

1016. In unforeseen circumstances, any 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

LIMITS AND BOUNDARIES OF LAND

1017. The limits of a property are determined by the titles, the plan and book of reference and the boundary lines of the land.

If the limits on the plan, the limits described in the titles, and the boundary lines of the land are inconsistent, the limits indicated in the titles prevail.

1018. Every owner may oblige his neighbour to determine the boundaries between their contiguous properties, in particular, in order to set displaced boundary markers back in place, to verify former boundary markers or to rectify the dividing line between their properties.

The owner shall first call upon his neighbour to consent to determine the boundaries and to agree upon a land-surveyor to carry out the necessary operations according to the rules in the Code of Civil Procedure.

SECTION II

WATERS

1019. 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, and the owner of higher land has no right to aggravate the condition of lower land.

Where the owner of higher land devoted to agriculture executes drainage works on his land, he is not presumed to aggravate the condition of lower land.

1020. An owner of land which has a natural spring on it may use the water from it at will for his needs, but must observe the conditions governing the use of the water.

1021. A riparian owner, for the use and operation of his property, particularly for his domestic needs or the irrigation of his land, may make use of any watercourse bordering or crossing his property. As the water leaves his property, he shall direct it, not excessively diminished 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.

1022. No person having a right to use a well, a sheet of water, a subterranean stream, a spring or any other running water may dry up or pollute the water he is entitled to use.

He may demand that another owner rearrange or destroy works that are polluting or drying up the water.

1023. Roofs are required to be built in such a manner that water, snow and ice fall on the owner's property.

SECTION III

TREES

1024. Fruit that falls from a tree onto a neighbouring property belongs by accession to the owner of the neighbouring property.

1025. If branches or roots extend over or upon an owner's property from the neighbouring property and 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.

An owner also, if a tree on the neighbouring property is in danger of falling on his property, may compel his neighbour to uproot the tree, to cut it down or to right it.

1026. The owner of a property used for agricultural operations may compel his neighbour to fell the trees along and not over five metres from the dividing line, if they are injurious to his operations, except fruit trees and maples.

SECTION IV

ACCESS TO AND PROTECTION OF ANOTHER'S LAND

1027. The owner of a property, if previously notified, shall allow his neighbour access to it if that is necessary in order to build, repair or maintain a structure, works or plantation on the neighbouring property.

1028. Where property is carried or strays onto the land of a third person by the effect of a force of nature or a fortuitous event, the owner of the 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 belongs to the owner of the property by accession.

1029. An owner obliged to give access to his property is entitled to compensation for the damage he incurs or to the restoration of his property to its former condition.

1030. The owner of a property shall do such repair or demolition work as is needed to prevent the collapse of a structure or work situated on his land that is in danger of falling onto the neighbouring property, including a public road.

1031. Where the owner of a property erects a structure or works or makes a plantation on or in his property, he shall see that he does not disturb the neighbouring property or undermine the structures, works or plantations situated on it.

1032. Where an owner has, in good faith, built beyond the limits of his property on a parcel of land belonging to another, he shall, as the owner of the property encroached upon elects, pay him the actual value of the parcel in return for its transfer, or pay him compensation for temporary loss of use of the parcel of land. Otherwise the rules on accession apply.

1033. 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 properties or local custom.

SECTION V

VIEW

1034. No person may have a direct view, balcony or other projection less than one hundred and eighty centimetres from the dividing line.

This rule does not apply to

(1) views on the public thoroughfare, steps for entering or leaving a building, or doors without windows or with frosted glass;

(2) owner who has made an opening or projection but is prevented from seeing by a wall or fence dividing the neighbouring properties;

(3) an opening that does not look out on any wall because of its height.

1035. The distance of one hundred and eighty centimetres is measured from the exterior facing of the wall where the opening is made or, in the case of a balcony or other projection, from its exterior line to the dividing line.

1036. A person may make translucent lights in a wall that is not a common wall, even on the dividing line.

1037. A co-owner of a dividing wall has no right to make any opening in it.

SECTION VI

RIGHT OF WAY

1038. The owner of land enclosed by that of others in such a way that it has no access or only an inadequate, difficult or impassable access to 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 the necessary right of way to use and operate his property.

Where an owner claims his right under this section, he shall pay compensation proportionate to the detriment he may cause.

1039. Right of way is claimed from the owner whose land affords the most natural way out, taking into consideration the condition of the premises, the benefit to the enclosed land, and the inconvenience caused to the servient land by the right of way.

1040. If land is enclosed as a result of the division of a property pursuant to a partition, will or contract, only that part of the property which still has access to the public road is liable to a claim of right of way, but in this case the way is provided without compensation.

1041. 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 servient property.

1042. If a right of way ceases to be necessary for the use and operation of a property, it is extinguished. 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 VII

FENCES AND COMMON DIVIDING FENCES

1043. 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 erect one-half of or share the cost of erecting a common dividing fence between their properties, or acquire common ownership of a private wall immediately adjacent to the dividing line by paying him one-half of the cost of the part rendered common and one-half of the value of the ground used, if any.

1044. 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.

Notwithstanding this article, where the embankment or the earth thrown up from a ditch is on only one side, the ditch is presumed to belong exclusively to the owner on that side.

1045. An owner erecting a supporting wall of a building along the dividing line of his land shall erect it on his own land only, although footings may encroach.

1046. Each owner, with the consent of the other, may build against a common wall and set beams and joists against it.

If the other refuses his consent, the owner may apply to the court to determine the necessary means to avoid infringement of the other's rights by the new structure.

1047. The maintenance, repair and rebuilding of a common dividing structure are the responsibility of each owner in proportion to his right.

An owner who does not use the common dividing structure may abandon his right and avoid his obligation to share the responsibilities by giving notice in writing of his intention to the other owners.

1048. Each owner of a common wall has a right to heighten it after ensuring himself by an expertise that it can withstand it, and shall pay one-sixth of the value of the heightening to the other as compensation.

If the wall cannot withstand to be heightened, the owner is required to rebuild the entire wall at his own expense, any excess thickness going on his own side.

1049. 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 such is the case, one-half of the actual value of the ground provided for excess thickness. He shall also repay any compensation he has received.

TITLE THREE

MODE OF OWNERSHIP

CHAPTER I

GENERAL PROVISIONS

1050. Ownership has two principal special modes, co-ownership and superficial ownership.

1051. Co-ownership is called undivided where several persons jointly have a right of ownership or other real right 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 an exclusive part of the property and an undivided share of the common parts.

CHAPTER II

UNDIVIDED CO-OWNERSHIP

SECTION I

ESTABLISHMENT OF INDIVISION

1052. Indivision may arise from a contract, succession or judgment or by operation of law.

1053. No indivision agreement regarding movable property may exceed five years, or regarding immovable property may exceed thirty years. An agreement for a longer time is reduced to the prescribed term. However, the agreement ir renewable.

To be set up against third persons, an indivision agreement regarding an immovable requires to be registered.

SECTION II

RIGHTS AND OBLIGATIONS OF UNDIVIDED CO-OWNERS

1054. 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.

Each may alienate or hypothecate his share or otherwise offer it as security, and his creditors may seize it.

1055. Each undivided co-owner has a right of pre-emption in the share of an undivided co-owner who intends to transfer it by onerous title to a person who is not one of the co-owners.

If several undivided co-owners exercise their right of pre-emption in a share, it is partitioned among them proportionately to their interest in the undivided property.

1056. 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.

1057. Each undivided co-owner is responsible in proportion to his share for the losses, administrative costs and other expenses related to the undivided property.

1058. Each undivided co-owner is entitled to be reimbursed for necessary outlays he has made to conserve the movable or immovable property. For other outlays, he is entitled, at partition, to an indemnity equal to the increase in value given to the property.

Conversely, each undivided co-owner is accountable for any loss or deterioration which by his doing decreases the value of the undivided property.

SECTION III

ADMINISTRATION OF UNDIVIDED PROPERTY

1059. Undivided co-owners of property administer it jointly.

1060. Administrative decisions are taken by a majority in value of the undivided co-owners.

Decisions in view of alienating or partitioning the property, encumbering it with a real right, changing its destination or making large or substantial changes to it require unanimous approval.

1061. One of the undivided co-owners or another person, may be entrusted with the administration of the undivided property.

The court may designate the manager on the motion of one of the undivided co-owners where they do not agree on whom to appoint, or where it is impossible to appoint or replace the manager.

1062. Where one of the undivided co-owners, with the knowledge of the others and without objection on their part, administers the undivided property, he is deemed to have been appointed manager.

1063. The manager of undivided property shall act in its regard as the administrator of another person's property charged with simple administration.

The manager may take alone any decision regarding the administration of the property.

SECTION IV

END OF INDIVISION AND PARTITION

1064. No one is bound to remain in indivision; partition may be demanded at any time unless it has been postponed by express agreement, a testamentary disposition, a judgment, or operation of law, or unless it is impossible because the property has been appropriated for a durable purpose.

Notwithstanding any agreement to the contrary, the majority in value of the undivided co-owners may demand partition of an immovable in order to establish divided co-ownership.

1065. 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 dangerous for the undivided co-owners.

1066. If one of the undivided co-owners objects to continuing in indivision, the others may satisfy him at any time by apportioning, after an expertise, his share to him, in kind if it is easily detachable from the rest of the undivided property, or in money if his share is not easily detachable or he expresses a preference therefor.

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 of the undivided co-owners is increased in proportion to its payment.

1067. Creditors who had a right of action against property before it became undivided and creditors whose claim arises from the administration of the undivided property are paid out of the assets before partition. They may, in addition, seize and sell the undivided property.

No creditor, not even a hypothecary or privileged creditor, of an undivided co-owner may demand partition, except by an action in subrogation where the individual could demand it himself. A creditor may, however, seize and sell his debtor's share.

1068. Indivision may be terminated by decision of a majority in value of the undivided co-owners where a large part of the undivided property is lost or expropriated.

1069. Indivision ends by the partition in kind or alienation of the property.

In the case of partition, the provisions relating to the partition of successions apply, *mutatis mutandis*.

CHAPTER III

DIVIDED CO-OWNERSHIP OF IMMOVABLES

SECTION I

ESTABLISHMENT OF DIVIDED CO-OWNERSHIP

1070. Divided co-ownership of an immovable is established by registration in the index of immovables of a declaration under which ownership of the immovable is apportioned among its owners in fractions.

Even one person acting by himself may divide an immovable and establish a co-ownership.

1071. 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 parts, to protect the rights attaching to the immovable or the co-ownership and to take all measures of common interest.

The legal person shall be called a syndicate and be registered in the Legal Persons Registry.

1072. Divided co-ownership may be established of an immovable that is the object of an emphyteutic lease or superficies right if the

unexpired term of the lease or right, at the time of registration of the declaration, is over fifty years.

In the case of the first paragraph, each co-owner assumes, dividedly and proportionately to the relative value of his fraction, the obligations of the emphyteutic lessee or superficiary, as the case may be, towards the owner of the immovable or of the soil and subsoil.

SECTION II

FRACTIONS OF CO-OWNERSHIP

1073. 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, area or volume and location of the exclusive part of each fraction, but not of its use.

The relative value is determined at the time of registration of the declaration.

1074. Those parts of the buildings and land that are the property of a specific co-owner and that are reserved for his use alone are exclusive.

1075. Those parts of the buildings and land that are for the use of all the co-owners are common.

Notwithstanding the first paragraph, some common parts may be allocated to the use of one or more designated co-owners. The rules regarding the common parts apply to the common parts for restricted use only.

1076. The following are deemed to be common parts: the ground, yards, verandas or balconies, parks and gardens, access ways, stairways and elevators, passageways and halls, common service areas, parking and storage areas, 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 exclusive parts.

1077. Partitions or walls that are not part of the foundations and main walls of a building but which separate an exclusive part from a common part or from another exclusive part are presumed common.

1078. Each co-owner has an undivided right of ownership in the common parts. His share of the common parts is proportionate to the relative value of his fraction.

1079. Each fraction constitutes a distinct entity and may be alienated in whole or in part, the alienation including, in each case, the share of the common parts appurtenant to the fraction or the part of the fraction alienated, as well as the right to use common parts for restricted use only, where that is the case.

1080. The share of the common parts is not susceptible, separately from the exclusive parts, of alienation, an action in partition or forced licitation.

Notwithstanding the first paragraph, the right to use a common part for restricted use only may be alienated separately from the exclusive part with the approval of the syndicate.

1081. Alienation of a divided part of a fraction is void and not registrable unless the declaration of co-ownership, the cadastral plan and the book of reference have been priorly altered, with the required authorizations, so as to create a new fraction, describe it, give it a separate cadastral number and determine its relative value.

1082. Each fraction of the immovable forms a distinct entity for the purposes of real estate assessment and taxation.

The syndicate shall be impleaded in any judicial contestation of the assessment of a fraction by a co-owner.

1083. Notwithstanding articles 1983 and 2017 of the Civil Code of Lower Canada, a hypothec or privilege existing on the whole of an immovable held in co-ownership is divided among each of the fractions according to its relative value.

SECTION III

DECLARATION OF CO-OWNERSHIP

§ 1.—*Content of the declaration*

1084. A declaration of co-ownership comprises the co-ownership deed, the by-laws of the immovable and a description of the fractions.

1085. A co-ownership deed shall define the destination of the immovable, of the exclusive parts and of the common parts.

The deed 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 allocated to each fraction, the rules on adopting and amending the by-laws of the immovable and any other agreement regarding the immovable or its exclusive or common parts.

1086. The by-laws of an immovable shall contain the rules on the enjoyment, use and upkeep of the exclusive and common parts and those on the operation and administration of the co-ownership, particulary the rules regarding the respective powers and duties of the board of directors of the syndicale and the general meeting of the co-owners.

The by-laws may also deal with the procedure of assessment and collection of contributions to the common expenses.

1087. A description shall contain either the cadastral description of the immovable, of the exclusive parts and of the common parts, or the plans of the immovable showing all the land and buildings, the shape and dimensions of all the exclusive and common parts and the location of each in the immovable.

A description shall also contain a description of the real rights affecting or existing in favour of the immovable other than the hypothecs and privileges.

The plans shall bear a certificate of a land-surveyor attesting, where such is the case, that the buildings have been constructed according to the plans.

1088. 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 execution of works that may have an impact on the common parts subject to approval by a general meeting are authorized if they are justified according to the first paragraph.

1089. The by-laws of the immovable may be set up against the lessee or occupant of a fraction upon registration of the by-laws or their being given a copy by the co-owner or, failing him, by the syndicate.

1090. 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 possession, periodically and successively, in the fraction, nor may a fraction be alienated for that purpose.

Where the declaration makes provision for periodical and successive possession 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.

1091. The fact that parts of an immovable or services are destined to be common to several immovables held in co-ownership the

construction of which is spread over several years shall be stated in the declaration and, where such is the case, the prospectus. A description of the general development plan of the co-ownership shall be joined to the declaration.

§ 2.—*Registration of the declaration*

1092. A declaration of co-ownership, and any amendments, shall be in the form of a notarial deed *en minute*.

A declaration, and amendments, are registered by deposit; a notation of any amending instrument shall be made in the margin of the declaration.

1093. No deed of co-ownership may be set up against the owners of an immovable or the holders of privileges or hypothecs registered against it unless, at the time of registration, it is signed by all the owners and accompanied with the written consent of all the holders.

SECTION IV

RIGHTS AND OBLIGATIONS OF CO-OWNERS

1094. Each co-owner has the disposal of his fraction; he has free use and enjoyment of his exclusive part and of the common parts 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.

1095. Each of the co-owners 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, although only the co-owners who use common parts for restricted use only shall contribute to the costs related to those parts.

1096. Every co-owner who gives a lease on his fraction shall notify the syndicate and give the lessee's name.

1097. No co-owner may interfere with the execution, even inside his exclusive part, of work required for the conservation of the immovable decided upon by the general meeting of the co-owners, or of urgent work.

Where a fraction is leased, the administrator may give the lessee the notices prescribed in articles 1653 and 1654.1 of the Civil Code of Lower Canada regarding improvements and repairs.

1098. A co-owner who suffers prejudice by the execution of work, because of a permanent diminution in the value of his fraction, a serious disturbance, although temporary, of enjoyment, or deterioration is enti-

tled to compensation from the co-ownership if the syndicate ordered the work or, if it did not, from the co-owners who did the work.

1099. A co-owner, within three years from the day of registration of the declaration of co-ownership, or within two years from the first transfer of his fraction by onerous title, may demand a revision of the apportionment of the common expenses or of the relative value of the fractions if the apportionment is unjust and does not conform to the criteria for determining the relative value of the fractions.

SECTION V

RIGHTS AND OBLIGATIONS OF THE SYNDICATE

1100. 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 put at the disposal of the co-owners the copies of the contracts to which it is a party, the plans of any immovable constructed, and all other documents regarding the immovable and the syndicate.

1101. The syndicate shall establish a contingency fund to provide cash funds on a short-term basis allocated exclusively to major repairs and the replacement of the common parts. The syndicate is the owner of the fund.

1102. The syndicate shall determine the contribution of the co-owners to the contingency fund according to the cost of the major repairs and the cost of replacing the common parts. It shall, where applicable, take into account the rights of the co-owners concerned in the common parts for restricted use only.

It shall also, after consulting the meeting of the co-owners, determine the amount of money required for maintenance and other expenses of the co-ownership.

In either case, the syndicate shall, without delay, notify each co-owner of the amount of his contribution and the date when it is payable.

1103. The syndicate has an insurable interest in the whole immovable, including the exclusive parts. 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 of the insurance must equal the replacement cost of the immovable.

The syndicate shall also take out third person liability insurance.

1104. Non-observance of a condition of the insurance contract by a co-owner is not a sufficient cause to set up against the syndicate if it suffers prejudice thereby.

1105. The indemnity owing to the syndicate following a loss is, notwithstanding article 2586 of the Civil Code of Lower Canada, paid to a trustee appointed in the co-ownership deed or, failing that, designated by the meeting of the co-owners.

The indemnity must be used to repair or rebuild the immovable.

1106. The syndicate, with authorization, may acquire or alienate fractions, common parts or other real rights.

An exclusive part does not cease to be exclusive by the fact of its acquisition by the syndicate, but the latter has no vote for that part and the total number of votes is reduced accordingly.

1107. The syndicate is responsible for damage caused to the co-owners or third persons by structural defects or lack of maintenance of the common parts, subject to any right of appeal.

1108. 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 when the cause of action arose, proportionately to the relative value of his fraction.

1109. The syndicate may demand the resiliation of the lease of a fraction, after notifying the lessee, where the inexecution of an obligation by the lessee causes serious prejudice to a co-owner or to another occupant of the immovable.

1110. Where a co-owner refuses to comply with the declaration of co-ownership and serious and irreparable prejudice thereby results to the syndicate or one of the co-owners, either of the latter 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 any other penalty, order the co-owner's fraction sold at public auction, after fixing the upset price.

1111. The syndicate has a legal hypothec on the fraction of a co-owner whose payment of his share of the common expenses or of his contribution to the contingency fund is more than sixty days overdue.

Registration of a notice of the hypothec preserves preference for the expenses and debts of the current year and the two succeeding years.

1112. The syndicate may institute any action on the ground of hidden faults affecting the common parts or, with the authorization of the co-owners, the exclusive parts.

Where the defendant sets up the failure to act with reasonable diligence against an action under this article, 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 transfer of control of the syndicate by the promoter.

1113. The syndicate has a right of pre-emption in the rights of the owner or the owner of the soil and subsoil of an immovable that is subject to an emphyteutic lease or to superficial ownership and in which divided co-ownership has been established.

Where the syndicate exercises its right of pre-emption, the rights it acquires from the owner, or from the owner of the soil and subsoil become common parts and the co-owners' right ceases to be of a temporary nature.

1114. The syndicate may join an association of co-ownerships formed to see to the creation, administration and upkeep of common services for several immovables held in co-ownership, or the pursuit of common interests.

SECTION VI

THE DIRECTORS OF THE SYNDICATE

1115. The composition of the board of directors, the mode of appointment, replacement and remuneration of a director and the other conditions of the office of director 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.

1116. The instrument of appointment, resignation or removal of a director must be deposited in the registry of legal persons.

1117. A director of a syndicate shall act in all things according to the provisions of the declaration of co-ownership and of the decisions of the general meeting of the co-owners as the administrator of the property of others charged with simple administration.

A director may be removed by the general meeting if, being a co-owner, he neglects to pay his share of the common expenses.

SECTION VII

THE GENERAL MEETING OF THE CO-OWNERS

1118. The notice calling the annual general meeting of the co-owners must be accompanied, in addition to the balance-sheet, with a statement of the results for the preceding financial year, a statement of debts and claims, the budget forecast, any draft amendment to the declaration of co-ownership or a note giving the essential terms and conditions of a proposed contract or planned work.

1119. Within five days of the calling of a general meeting of the co-owners, a co-owner may request the placing of a question on the agenda.

The director shall give a written notice to the co-owners before the meeting is held setting forth the questions.

1120. Co-owners holding a majority of the votes constitute a quorum at general meetings.

When there is no longer a quorum at a meeting, the meeting must, on the motion of a co-owner, be declared adjourned.

1121. Each co-owner is entitled to a number of votes at a general meeting proportionate to the relative value of his fraction. The undivided owners of a fraction shall vote in proportion to their undivided shares.

Nothwithstanding the foregoing, no co-owner is entitled to over ten per cent of all the votes of the co-owners in addition to the votes attached to the fraction in which he resides.

1122. No promoter of a co-ownership is entitled to over sixty per cent of all the votes of the co-owners at the end of the first year of existence of the syndicate.

The limit is reduced to forty per cent at the end of the second year, and twenty-five per cent at the end of the third year.

1123. A person who at the time of registration of a declaration of co-ownership is the owner of the immovable or of a group of fractions and his successors, other than a person who in good faith acquires a fraction for a price equal to its market value, is deemed to be a promoter, as is a person who builds an immovable in order to establish a co-ownership in it.

1124. Where a co-owner defaults payment of his share of the common expenses, the syndicate may obtain a court order depriving him of voting rights. The total number of votes is reduced accordingly.

1125. No assignment of the voting rights of a co-owner which has not been notified to the syndicate may be set up against it.

1126. Decisions of a general meeting, including a decision to correct a clerical error in the declaration of co-ownership, are taken by a majority of the votes present or represented at the meeting.

1127. No decisions respecting the following matters may be taken except by a majority vote of the co-owners representing three-fourths of the voting rights:

(1) acts of acquisition or alienation of immovables by the syndicate;

(2) works for the alteration, enlargement or improvement of the common parts, and the apportionment of their cost;

(3) amendment of the declaration of co-ownership or of the description of the fractions.

1128. A majority vote of the co-owners representing ninety per cent of the voting rights are required for a decision

(1) to change the destination of the immovable;

(2) to authorize the alienation of common parts the retention of which is necessary to the destination of the immovable;

(3) to authorize the construction of buildings in order to create new fractions;

(4) to amend the declaration of co-ownership in order to permit a fraction to be held by several persons each having a right of enjoyment, periodically and successively.

1129. The co-owners of adjacent fractions may alter the boundaries between their fractions without obtaining the majority of votes required provided they obtain the consent of their hypothecary or preferred creditors and of the syndicate, and alter the declaration of co-ownership and the plan and book of reference at their own expense.

No alteration under this article may effect a decrease in the relative value of the group of fractions altered or the total of the voting rights attached to them.

1130. Any stipulation of the declaration of co-ownership which changes the number of votes required in this chapter for taking any decision is deemed void.

1131. Any decision of the general meeting of the co-owners imposing on a co-owner, contrary to the declaration of co-ownership,

a change in the relative value of his fraction, a change of destination of his exclusive part or a change in the use he may make of it is void.

1132. A co-owner may apply to the court to nullify a decision of the general meeting if the decision is partial, taken with intent to injure or in contempt of the rights of the co-owners.

The right of action is forfeited unless instituted within two months after the holding of the meeting.

If the action is futile or vexatious, the court may condemn the plaintiff to pay damages.

SECTION VIII

TRANSFER OF CONTROL OF THE SYNDICATE

1133. Within three months from the day on which a promoter of a co-ownership ceases to hold a majority of voting rights in the general meeting of the co-owners, the director shall call a special meeting of the co-owners to elect a new board of directors.

If the meeting is not called within three months, any co-owner may call it.

1134. The promoter shall render account of his administration at the special meeting.

He shall produce the financial statements, which must be prepared by an accountant and be accompanied with remarks, if any, on the financial situation of the syndicate.

The accountant, in his report to the co-owners, shall indicate any irregularity that has come to his attention.

1135. 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.

1136. The new board of directors may, within two months of the election, terminate, without penalty, maintenance or service contracts entered into by the promoter, if they are prejudicial to the syndicate.

SECTION IX

LOSS OF THE IMMOVABLE AND TERMINATION OF CO-OWNERSHIP

1137. Co-ownership of an immovable may be terminated by a two-thirds majority of the co-owners representing ninety per cent of the votes.

The decision to terminate the co-ownership must be accompanied with the consent of the person's holding privileges or hypothecs on the immovable or part thereof. Notice of the decision, signed by the syndicate and the persons whose consent is required must be registered in the index of immovables and filed in the legal persons registry. The plan and book of reference are then cancelled.

1138. A co-ownership is liquidated according to the rules on liquidation of legal persons.

The liquidator of the syndicate is charged with liquidating the co-ownership and in that regard is seised of the immovable and of all the rights of the co-owners in the immovable, in addition to the property of the syndicate.

CHAPTER IV

SUPERFICIAL OWNERSHIP

SECTION I

NATURE OF SUPERFICIAL OWNERSHIP

1139. Superficial ownership enables the superficiary to be the owner of the structures, works or plantations in or on an immovable belonging to another.

It results from the division of the right of ownership, the transfer of the right of accession or renunciation of the benefit of accession.

1140. The right of the superficial owner to use the subsoil is governed by an agreement. Failing an agreement, the subsoil is encumbered by the servitudes necessary for the exercise of the superficial ownership. These servitudes are extinguished on the termination of the right.

1141. The superficiary and the owner of the subsoil each bears the charges encumbering what constitutes the object of his right of ownership.

SECTION II

CONSTRUCTION LEASE

1142. Superficial ownership established by means of a construction lease, enables the lessee of the immovable, with the permission of the lessor, to erect structures or works or make plantations on it and to be recognized as their owner.

1143. A lessee may transfer the rights arising from a lease.

He may also, acting alone, encumber the leased immovable with expedient servitudes, even in favour of third persons. These servitudes are extinguished on the termination of the right.

1144. The duration of a construction lease must be determined in the contract, which must not exceed one hundred years. If the stipulated duration exceeds one hundred years, the lease is terminated on the lapse of that term.

A construction lease is not susceptible of tacit renewal.

SECTION III

TERMINATION OF SUPERFICIAL OWNERSHIP

1145. Superficial ownership is terminated by expropriation of the whole of the soil and subsoil and of the structures, works or plantations erected or made thereon.

Total loss of the structures, works or plantations does not terminate the superficial ownership.

1146. Superficial ownership is also terminated

(1) by the reunion of the qualities of subsoil owner and superficial owner in the same person, but without prejudice to the rights of third persons;

(2) by the fulfilment of a resolutive condition;

(3) by the expiration of the term.

1147. At the termination of superficial ownership, the subsoil owner acquires ownership of the structures, works or plantations by paying their value to the superficiary, if they are of smaller value than the subsoil.

If the structures, 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, at his own expense, remove the structures, works or plantations he has erected or made and return the immovable to its former condition.

TITLE FOUR

DISMEMBERMENTS OF THE RIGHT OF OWNERSHIP

GENERAL PROVISION

1148. The main dismemberments of ownership are usufruct, use, servitude and emphyteusis.

The parties may constitute any other dismemberment by dividing the prerogatives of ownership among themselves.

CHAPTER I

USUFRUCT

SECTION I

NATURE OF THE USUFRUCT

1149. Usufruct is the right of using and enjoying, for a certain time, property owned by another as one's own, subject to the obligation of preserving its substance and maintaining its destination.

1150. Usufruct is established by contract, by will or by operation of law; it may also be established by judgment.

1151. Usufruct may be established for the benefit of one beneficiary or several beneficiaries jointly or successively.

The beneficiaries must exist when the usufruct opens in their favour.

1152. No usufruct may last longer than one hundred years; if the duration stipulated exceeds one hundred years, the usufruct is terminated on the expiry of one hundred years.

Usufruct granted without a term is granted for life or, in the case of a legal person, for thirty years.

SECTION II

RIGHTS OF THE USUFRUCTUARY

§ 1.—*Scope of the usufructuary's right*

1153. 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.

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.

1154. The usufructuary is the owner of the fruits and revenues produced by the property.

Usufruct also bears on all accessories and on everything that is naturally united to or incorporated with the immovable by accession.

1155. The usufructuary disposes of that property subject to 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.

1156. The usufructuary may also dispose, as a reasonable and prudent administrator, of property which, though not consumable, gradually deteriorates with time and use.

The usufructuary shall, in the case described in the first paragraph, return, at the end of the usufruct, the value of the property at the time he disposed of it.

1157. The usufructuary is entitled to the natural fruits attached to the property at the beginning of the usufruct.

The usufructuary has no right to the fruits still attached to the property at the time his usufruct ceases.

Compensation is due to the bare owner or to the usufructuary, as the case may be, by reason of work done or expenses incurred for the production of the fruits.

1158. 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.

1159. Extraordinary profits and payments which may derive from the property under usufruct, such as premiums allotted for the redemption of securities, are paid to the usufructuary, who is accountable for them to the bare owner at the end of the usufruct.

1160. If a debt subject to the usufruct becomes payable during the usufruct, the price is paid to the usufructuary, who shall give discharge for it.

The usufructuary is accountable for a debt paid to him to the bare owner at the end of the usufruct.

1161. The right to increase the capital subject to the usufruct, such as the right to subscribe by preference for shares, 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.

1162. Voting rights attached to shares or other securities, stocks or any fraction thereof or any other property belong to the usufructuary.

Notwithstanding the foregoing 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, group or business enterprise, belongs to the bare owner.

1163. Where an undivided property is encumbered with a usufuct, no usufructuary may acquire a share in bare ownership unless none of the bare owners acquires it and no bare owner may acquire a share in usufruct unless none of the usufructuaries acquires it.

1164. The usufructuary may transfer his right or lease a property comprised in the usufruct.

1165. A creditor of the usufructuary may cause the rights of the usufructuary to be seized and sold.

A creditor of the bare owner may also cause the rights of the bare owner to be seized and sold, but subject to the rights of the usufructuary.

§ 2.—*Outlays*

1166. Necessary outlays made by the usufructuary are treated, in relation to the owner, as those made by a possessor in good faith. The same rule applies to useful outlays.

§ 3.—*Trees and minerals*

1167. 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 is required to replace the trees that have been destroyed, conformably to the usage of the place or to the custom of the owners. He is also required to replace fruit trees and maple trees, unless most of them have been destroyed.

1168. The usufructuary may begin agricultural or sylvicultural operations if the land subject to the usufruct is suitable therefor.

Where the usufructuary begins or continues sylvicultural 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, before his operation begins, have his operation plans approved by the bare owner. If he fails to obtain the bare owner's approval, he may have his plans approved by the court.

1169. No usufructuary may extract minerals from the land subject to the usufruct except for the repair and maintenance of the land.

If, however, before the opening of the usufruct, the extraction of minerals constituted a source of income for the owner, the usufructuary may continue the operation in the same way as it was begun.

SECTION III

OBLIGATIONS OF THE USUFRUCTUARY

§ 1.—*Inventory and security*

1170. Unless exempted by the owner of the property, the usufructuary having convened the bare owner, shall cause to be drawn up at his own expense, an inventory of the movables and a statement of the immovables subject to his right.

Notwithstanding the foregoing, in no case where the usufruct is successive may the owner exempt the usufructuary.

1171. In no case may the usufructuary compel the owner to deliver the property to him until he has caused the inventory of the movables or the statement of immovables to be drawn up.

1172. Except in the case of a vendor or donor who has reserved the usufruct, the usufructuary shall, within two months of the opening of the usufruct, take out liability insurance or furnish to the bare owner another security to ensure execution of his obligations, unless exempted therefrom by the owner.

The usufructuary shall furnish additional security if his obligations increase while the usufruct lasts.

1173. If the usufructuary does not furnish security within the allotted time, the bare owner may have the property sequestered.

1174. The usufructuary's delay to cause an inventory of the movables and a statement of the immovables to be drawn up or to furnish security deprives him of his right to the fruits and revenues from the opening of the usufruct to the execution of his obligations.

1175. The usufructuary may apply to the court for leave to retain part of the sequestered movables necessary for his use on the sole condition that he undertakes to produce them at the end of the usufruct.

§ 2.—*Insurance and repairs*

1176. 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.

1177. In the case of a loss, the amount of the indemnity is paid to the usufructuary, who shall give discharge therefor to the insurer.

The usufructuary is required to use the indemnity for the repair of the property, except in cases of total loss, where he is entitled to the indemnity.

1178. The usufructuary or the bare owner may take out for his own account an insurance to secure his rights.

The indemnity belongs to the usufructuary or the bare owner, as the case may be.

1179. Maintenance of the property is borne by the usufructuary. He is not required to make major repairs except where rendered necessary through his act, particularly where no maintenance repairs have been made since the opening of the usufruct.

1180. Major repairs are those which affect a substantial part of the property and require extraordinary outlays such as repairs relating to the beams and support walls, replacement of roofs, prop-walls, heating, electricity, plumbing or electronic systems, and, in respect of corporeal movables, motive parts or casing of the property.

1181. The usufructuary shall notify the bare owner when major repairs are necessary.

The bare owner is under no obligation to make the major repairs but, 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 he is entitled to reimbursement of the cost at the end of the usufruct.

§ 3.—*Other charges*

1182. The usufructuary is responsible, in proportion to the duration of his right, for ordinary charges affecting the property subject to his right and for the other charges that are ordinarily paid out of the revenues.

The usufructuary is responsible similarly for extraordinary charges, such as special taxes, that are payable in periodic instalments over several years.

1183. The usufructuary by particular title is not responsible for the payment of the debts of succession.

If the usufructuary is forced to pay a debt in order to preserve his right, he may require immediate repayment from the debtor or repayment from the bare owner at the end of the usufruct.

1184. The usufructuary by general title 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.

1185. The usufructuary 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 does not 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 debt to be sold or pay the debt himself; in the latter case, the usufructuary shall, for the duration of the usufruct, pay interest to the bare owner on the amount paid.

1186. The usufructuary is responsible for expenses for 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 by general title and the bare owner apply unless the usufruct is terminated by the proceedings, in which case, the expenses are divided equally between the usufructuary and the bare owner.

1187. If, during the usufruct, a third person encroaches on the property of the bare owner or otherwise infringes his rights, the usufructuary shall so notify the bare owner, failing which he is responsible for all damage which may result to the bare owner, as if he himself had committed waste.

1188. 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 fortuitous event.

1189. If a usufruct is established upon a herd or a flock and the entire herd or flock perishes by fortuitous event, 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

TERMINATION OF USUFRUCT

1190. Usufruct is terminated

(1) by the expiration of the term;

(2) by the death of the usufructuary or the dissolution of the legal person;

(3) by the reunion of the qualities of usufructuary and bare owner in the same person;

(4) by the forfeiture or abandonment of the right or its conversion into a rent;

(5) by the non-user for thirty years.

1191. Usufruct is also terminated by the total loss or the expropriation of the property over which it is established.

Where part only of the property subject to usufruct is destroyed or expropriated, the usufruct subsists upon the remainder.

Where an insurance or expropriation indemnity is paid, the usufruct subsists. The usufructuary has the enjoyment of the indemnity subject to rendering account of it at the end of the usufruct.

1192. 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.

1193. A usufruct created for the benefit of several usufructuaries, either jointly or successively, is terminated by with the death of the last surviving usufructuary or the dissolution of the last legal person.

1194. At the end of the usufruct, the usufructuary shall return to the bare owner the property subject to the usufruct in the condition in which it is at that time.

The usufructuary is accountable for any loss or deterioration unless it is not due to his fault or results from normal use of the property.

1195. 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 declared forfeited of his right.

The court may, according to the gravity of the circumstances, pronounce the absolute extinction of the usufruct, with compensation payable immediately or by instalments, or without compensation. It may also, on the same conditions, declare the usufructuary's right forfeited in favour of a joint or successive usufructuary.

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.

1196. A usufructuary may abandon his right, in whole or in part.

Where part only of the right is abandoned, the court, failing an agreement, shall fix the new obligations of the usufructuary, taking into account, in particular, the value of the usufruct, the scope and duration of the right, and the fruits and revenues derived therefrom.

1197. Total renunciation may be set up against the bare owner from the day it is notified to him; partial renunciation may be set up

from the date of judicial proceedings or of an agreement between the parties.

1198. A usufructuary having serious difficulty in fulfilling his obligations is entitled to require from the bare owner or joint or successive usufructuary, if any, that his right be converted into a life annuity.

Failing an agreement between the parties, the court shall fix the life annuity by taking into account, in particular, the value of the usufruct, the scope and duration of the usufruct and the fruits and revenues derived therefrom.

CHAPTER II

USE

1199. A right of use is the right to enjoy the property of another for a time and to take the fruits and revenues thereof but only to the extent of the needs of the user and, where such is the case, the persons living with him or his dependants.

1200. The right of use is unassignable and unseizable unless the agreement between the parties provides otherwise or the court authorizes it in the interest of the user after ascertaining that the owner incurs no prejudice thereby.

1201. A user whose right bears on part only of an immovable may make use of any facility intended for common use.

1202. A user who takes all the fruits and revenues of the property or occupies the entire immovable is fully responsible for the costs of production, 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 occupies only part of the immovable, he shall contribute in proportion to his use.

1203. Where a right of use is granted by judgment, the court may require the owner of the property to restore the property to a good state of repair, make repairs, even major repairs, or contribute to any other expense concerning the property.

The court may also exempt the user from the obligation of giving security or drawing up an inventory of the movables or a statement of immovables.

1204. The provisions governing usufruct are, in all other respects, applicable to the right of use.

CHAPTER III

SERVITUDE

SECTION I

NATURE OF SERVITUDE

1205. A servitude is a charge imposed on an immovable, called the servient land, in favour of another immovable, called 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.

1206. Servitudes are either continous or discontinuous.

Continuous servitudes do not require the actual intervention of the holder as in the case of servitudes of view or construction servitudes.

Discontinuous servitudes require the actual intervention of the holder, as in the case of pedestrian or vehicular rights of ways.

1207. Servitudes are either apparent or unapparent.

An apparent servitude is manifested by an external sign; otherwise a servitude is unapparent.

1208. A servitude is established by contract, by will, by destination of owner or by the effect of law.

Continuous and apparent servitude may also be established by acquisitive prescription but in no case may discontinuous or unapparent servitude be acquired without title.

1209. Servitudes are not affected by the transfer of ownership of the servient or dominant land.

Servitudes remain attached to the immovables through changes of ownership, subject to the provisions relating to the registration of real rights.

1210. Servitude by destination of owner is constituted by means of a writing establishing that the two lands now divided formerly belonged to the same owner who established or maintained between the two lands the physical arrangement which constitutes the servitude.

SECTION II

EXERCISE OF THE SERVITUDE

1211. The owner of the dominant land may, at his own expense, take the measures or erect all the works necessary to exercise and preserve the servitude unless the title establishing the servitude provides otherwise.

At the end of the servitude the owner of the dominant land shall, at the request of the owner of the servient land, restore the premises to their former condition.

1212. 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 relinquishing the entire servient land or any part of it sufficient for the exercise of the servitude to the owner of the dominant land.

1213. 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.

Notwithstanding the foregoing, the owner of the servient land 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.

1214. If the dominant land is divided, the servitude remains due for each portion but the situation of the servient land is not thereby aggravated.

Thus, in the case of a right of way, all owners of lots resulting from the division of the dominant land must exercise it over the same place.

1215. Division of the servient land does not affect the rights of the owner of the dominant land.

1216. Except in the case of enclosed land, 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.

If the price of redemption is fixed by the court, the latter shall take into account, in particular, the time 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.

1217. The parties may exclude, in writing, the possiblitity of redeeming a servitude for a period not exceeding thirty years.

SECTION III

TERMINATION OF THE SERVITUDE

1218. A servitude is terminated

(1) by the reunion of the qualities of owner of the servient land and dominant land in the same person;

(2) by the express renunciation of the owner of the dominant land;

(3) by the expiration of the term for which it was established;

(4) by redemption;

(5) by non-user for thirty years.

1219. Prescription, as regards discontinuous servitudes, begins to run from the day the owner of the dominant land ceases to exercise the servitude and, as regards continuous servitudes, from the day any act contrary to their exercise is done.

1220. The mode of exercising a servitude may be prescribed just as the servitude itself, and in the same manner.

1221. 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

1222. Emphyteusis is a right by which a person acquires for a time the full enjoyment of an immovable owned by another provided he does not endanger the existence of it and undertakes to make buildings, works or plantations that increase its value.

A contract under which the emphyteutic holder is required to erect structures or works or make plantations to enhance the immovable is also considered an emphyteusis.

1223. The term of the emphyteusis must be stipulated in the contract and be for not less than ten nor more than one hundred years. If the duration stipulated exceeds one hundred years, it is reduced to that term.

1224. Emphyteusis established on an immovable that is under a declaration of co-ownership may, whatever its term, be renewed without the emphyteutic holder being required to erect structures or works or make plantations to enhance the immovable or increase its value.

1225. The creditor of the emphyteutic holder may cause the latter's rights to be seized and sold.

The creditor of the owner may also cause the latter's rights to be seized and sold, but subject to the rights of the emphyteutic holder.

SECTION II

RIGHTS AND OBLIGATIONS OF THE EMPHYTEUTIC HOLDER AND OF THE OWNER

1226. The emphyteutic holder has all the rights of an owner over the immovable, subject to the restrictions contained in this chapter or in the contract of emphyteusis.

The contract may, in particular, grant to the emphyteutic holder, or to the owner, a right of pre-emption or otherwise limit the right to dispose of the property or settle the expropriation or insurance indemnities between the emphyteutic holder and the owner.

1227. The emphyteutic holder shall, at his own expense, cause, after convening the owner, a statement of immovables subject to his right, to be drawn up, unless the owner has exempted him therefrom.

1228. The emphyteutic holder is responsible for a partial loss of the immovable; in no case may he, in that regard, apply for a release or a reduction of the rent stipulated, if any.

1229. The emphyteutic holder is responsible for repairs, even major repairs, concerning the immovable or the structures, works or plantations made or erected for the fulfilment of his obligation.

1230. The emphyteutic holder who commits waste or fails to prevent the deterioration of the immovable or in any manner endangers the right of the owner may be declared forfeited of his right.

The court may, according to the gravity of the circumstances, declare the absolute extinction of the emphyteusis, with compensation payable immediately or in instalments, or without compensation.

The creditors of the emphyteutic holder may intervene in the proceedings for the preservation of their rights; they may offer to repair the waste and give security for the future.

1231. The emphyteutic holder is responsible for all real estate charges affecting the immovable.

1232. The owner has, in respect of the emphyteutic holder, the same obligations as a vendor.

1233. Where a rent is stipulated in the contract and the emphyteutic holder fails to pay it for three years, the owner is entitled, after a notice of not less than three months, to resiliation of the contract.

SECTION III

TERMINATION OF EMPHYTEUSIS

1234. Emphyteusis is terminated

(1) by the expiration of the term stipulated in the contract;

(2) by the total loss or expropriation of the immovable;

(3) by the cancellation of the contract;

(4) by the reunion of the qualities of owner and emphyteutic holder in the same person, without prejudice, however, to the rights of third persons;

(5) by non-user for thirty years.

1235. Upon termination of the emphyteusis, the owner resumes possession of the immovable free of all the rights and charges that arose under the emphyteusis, except if the termination of the emphyteusis results from the cancellation of the contract.

1236. Upon termination of the contract, the emphyteutic holder shall return the immovable in a good state of repair with the structures, works or plantations stipulated in the contract, unless they have perished by fortuitous event.

Any structure, work or plantation made or erected without obligation are treated as outlays made by a possessor in good faith.

1237. Emphyteusis may also be terminated by abandonment, but abandonment may take place only if the emphyteutic holder has satisfied for the past all his obligations and if he leaves the immovable free of all charges.

TITLE FIVE

RESTRICTIONS ON THE FREE DISPOSITION OF CERTAIN PROPERTY

CHAPTER I

RIGHT OF PRE-EMPTION

1238. Pre-emption is a right that entitles its holder to purchase property in preference to any other person; the right arises from the owner's obligation to offer to sell him the property if he decides to transfer it.

The right of pre-emption is established by contract or by operation of law.

1239. The owner of the property shall, where he intends to transfer it, notify his intention in writing to the holder of the right of pre-emption, at the last known address of his domicile or place of business. The notice must also indicate the price and the terms and conditions of the intended transfer and, where such is the case, the name and address of the prospective purchaser.

1240. The holder of a right of pre-emption has one month after being notified to inform the owner that he intends to exercice his pre-emption right at the price and on the terms and conditions that were notified to him.

Where the holder fails to make his intention known within the allotted time or fails to exercise his right within two months of being notified, the owner may, provided he does so within six months of the notice, effect the intended transfer at the price and on the terms and conditions that were notified.

1241. The holder of a right of pre-emption who has registered a notice of address may, within one month of being notified that a creditor of the owner wishes to have the property sold or to take it back in payment of an obligation, be subrogated to the rights of the creditor by paying the owner's debt.

1242. No right of pre-emption on an immovable may be set up against third persons unless the right is registered.

A right of pre-emption on a movable may be set up against third persons who knew or should have known of the right.

1243. The owner shall, where he effects the transfer of the property, notify the fact to the holder of the right within ten days of the transfer.

1244. The holder of a right of pre-emption, within one year of becoming aware that a transfer has been made, without his having been notified of it, before the time limit for him to exercise his right had expired, or at a price or on terms and conditions other than those indicated to him, may demand that the transfer be cancelled and that he be substituted for the purchaser.

CHAPTER II

STIPULATIONS OF INALIENABILITY

1245. The exercise of the right to dispose of property may be restricted by a written stipulation upon the transfer of the property to a person who becomes the owner of it or acquires any other real right in the property or upon the transfer of the property to a trust.

A stipulation of inalienability is valid only if it is temporary and justified by a serious and legitimate interest. Nevertheless, in the case of a substitution or trust, the stipulation may be valid for the duration of the substitution or trust.

1246. 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 it is required by a higher interest.

1247. No stipulation of inalienability affecting an immovable may be set up against third persons unless it is registered; a similar stipulation affecting a movable may be set up against third persons only where they knew or should have known that the stipulation existed.

1248. A stipulation of inalienability affecting a property entails the unseizability of the property affected thereby with regard to any debt contracted before or during the period of inalienability.

1249. Any clause intended to prevent a person whose property is inalienable from contesting the validity of the stipulation of inalienability is or from applying for authorization to transfer the property deemed null.

The same rule applies to any penal clause having the same intent.

1250. Nullity of any alienation made notwithstanding a stipulation of inalienability and without leave from the court may be invoked only by the person who stipulated the inalienability or by the person for whose benefit inalienability was stipulated.

CHAPTER III

SUBSTITUTION

SECTION I

NATURE AND SCOPE OF SUBSTITUTION

1251. 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 and it must be evidenced in writing and registered.

1252. 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 twin the institute in respect of the subsequent substitute.

1253. 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 property given or bequeathed remaining at his death.

1254. No substitution may 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.

1255. Except where inconsistent, the rules on successions, particularly those relating to the right to elect or to testamentary dispositions, apply to a substitution from and after the time it opens, whether created by gift or by will.

SECTION II

SUBSTITUTIONS BEFORE OPENING

§ 1.—*Rights and obligations of the institute*

1256. Before the opening of a substitution, the institute is the owner of the substituted property, which forms, within his personal patrimonium, a separate patrimonium intended for the substitute.

1257. Within two months after the gift or after acceptance of the legacy, the institute must cause an inventory of the movables and a statement of the immovables substituted to be drawn up, at his expense and after convening the substitute to attend.

1258. The institute, in exercising his rights and performing his obligations, shall act with prudence and diligence, in view of the rights of the substitute.

1259. The institute shall perform all acts necessary to maintain and preserve the property.

The institute shall pay the charges and debts of all kinds becoming due before the opening; he shall collect the claims, give discharge therefor and exercise all judicial recourses related thereto.

1260. 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.

1261. A substitute is subject to the rules on usufruct as to his right to begin or continue agricultural, sylvicultural or mining operations on substituted land.

1262. A substitute may alienate by onerous title, hypothecate or lease the substituted property. He may also, if the constituting instrument of the substitution so provides, dispose of the property gratuitously, although not by will unless the instrument expressly allows it.

In no case are the rights of the acquirer, creditor or lessee affected by the rights of the substitute at the opening of the substitution.

1263. 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 that he receives from the grantor, in accordance with those provisions of the title on the administration of property of others which relate to investments presumed safe.

1264. Once a year, the institute shall inform the substitute of any change in the inventory of movables and the statement of immovables; he shall also inform him of any reinvestment he has made of the substituted property.

1265. Creditors of the institute may cause the rights conferred on the institute by the substitution to be seized and sold by judicial sale.

The creditors may also cause substituted property to be seized and sold by judicial sale, after discussion of the personal patrimonium of the institute. The substitute may oppose the seizure. Failing opposition, the sale is valid; the purchaser has a definitive title and the substitute's right of action is exercisable only against the institute.

1266. 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 of the substitute.

§ 2.—*Rights of the substitute*

1267. Before the substitution opens, the substitute has a contingent right in the property substituted; he may dispose of or renounce the property and perform any conservatory act to ensure protection of his right.

1268. The substitute may, where the institute refuses or fails to have an inventory of the movable property and the statement of immovables drawn up within the required time, cause them to be drawn up at the expense of the institute. He shall then convoke the institute and other interested persons and comply with the prescribed formalities.

1269. The institute shall, at the request of the substitute or any interested person who establishes that the measure is required, take out liability insurance or furnish security to guarantee the execution of his obligations.

The institute shall also furnish additional security where his obligations are increased before the opening of the substitution.

1270. If the institute fails to execute 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 the institute of revenues, require him to restore the capital, declare his rights forfeited in favour of the substitutes or appoint a sequestrator chosen by preference from the substitutes.

1271. 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, failing him, the person appointed by the court at the request of the institute or any interested person.

The public curator may be appointed to act.

SECTION III

OPENING OF THE SUBSTITUTION

1272. 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, no substitution may open more than thirty years after the gift or the opening of the succession, or after a substitution has opened in his favour.

1273. 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 in that case takes place only on the death of the last institute.

Notwithstanding the foregoing, in no case may the opening so delayed 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.

1274. 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

1275. The substitute who accepts the substitution receives the property directly from the grantor and is, by the opening, seised of ownership of the property.

1276. The institute shall, when the substitution opens, render account and deliver over the substituted property to the substitute. He shall remit the fruits and revenues earned since the opening of the substitution if he has collected them, unless the substitute duly summoned to assume his quality has failed to do so.

Where the substituted property is no longer in kind, the institute shall deliver over whatever has been acquired through reinvestment or, failing that, the amount equivalent to the value of the property at the time of the alienation.

1277. 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 or deterioration of the property except if it has occured without any fault on his part or if it results from normal use of the property.

1278. Where the substitution affects only the residue of the property given or bequeathed, either because the grantor allowed the institute not to reinvest the proceeds of the alienation of the substituted property, or because he allowed him to dispose of it gratuitously, the institute shall deliver over only the property remaining and the balance due on alienated property.

1279. The institute is entitled to the repayment, with interest from the opening of the substitution, of capital debts paid by him 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 the repayment in proportion to the duration of his right, of expenses generally debited from the revenues for any object that exceeds that duration.

1280. The institute is entitled to reimbursement of expenses he has made for useful outlays or outlays or for amenities, subject to the rules applicable to possessors in good faith.

1281. 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.

1282. The institute may retain the substituted property until payment of what is due to him.

1283. The heirs of the institute have the rights granted to him and shall continue anything that is the necessary result of the acts performed by him or that cannot be deferred without risk of loss.

The heirs of the institute shall also perform the obligations that this section imposes on the institute.

SECTION V

LAPSE AND REVOCATION OF SUBSTITUTION

1284. Lapse of a testamentary substitution with regard to an institute is effected without giving rise to representation and benefits his co-institutes or, failing 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.

1285. 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 the institute is the father or mother or where one of the co-substitutes has accepted the substitution.

1286. Revocation of a substitution with regard to the institute benefits the co-institute or, failing a co-institute, the substitute; revocation with regard to the substitute benefits the co-substitute or, failing a co-substitute, the institute.

1287. 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 PATRIMONIUMS BY APPROPRIATION

CHAPTER I

THE FOUNDATION

1288. Foundation is an act whereby a person irrevocably and permanently appropriates the whole or part of his property to the durable fulfilment of a socially beneficial object.

No foundation may have the making of profit or the operation of a business enterprise as its main object.

1289. Property is appropriated by gift or by will in accordance with the rules governing those acts.

1290. The property of the foundation constitutes either an autonomous patrimonium distinct from that of the settlor or any other person, or the patrimonium 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.

1291. 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 must be durably maintained and allow for the fulfilment of the object, 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

THE TRUST

SECTION I

NATURE OF THE TRUST

1292. A trust is an act whereby a person called the settlor appropriates property to the fulfilment of an object and transfers it from his patrimonium to another patrimonium that he establishes and which a trustee undertakes, by his acceptance, to hold and administer.

1293. The trust patrimonium, consisting of the transferred trust property, constitutes a patrimonium by appropriation, autonomous and distinct from that of the settlor, trustee or beneficiary and in which the latter has no real right.

1294. A trust is established by contract, whether by onerous title or gratuitously, by will or, in certain cases, by operation of law.

1295. 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.

1296. 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 patrimonium of the trust and is sufficient to establish the right of the beneficiary with certainty.

SECTION II

VARIOUS KINDS OF TRUSTS AND THEIR DURATION

1297. Trusts are created for personal objects, private objects or social objects.

1298. A personal trust is constituted gratuitously with the aim of securing for a person a benefit other than that resulting from the use of a property appropriated to a specific use.

The beneficiary of the trust may be a designated person or a person identifiable as a member of a class of persons related by blood or by marriage.

1299. A private trust is a trust created for the object of erecting, maintaining or preserving a corporeal thing or of using a property appropriated to a specific use, whether for the indirect benefit of a person or in his memory, or for securing the fulfilment of another private purpose.

1300. A trust created by onerous title with the aim 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.

1301. A social trust is a trust created to secure the fulfilment of a purpose of public or general interest, such as a trust established for philanthropic, educational, scientific or cultural purposes.

A social trust shall not have the making of profit or the operation of an undertaking as its main object.

1302. No personal trust created for the benefit of several persons successively may include more than two ranks of beneficiaries of the fruits and revenues apart from the beneficiary of the capital; otherwise, it is without effect for any subsequent rank.

Transmissions of fruits and revenues between co-beneficiaries who are of the same rank are, with regard to their effects, subject to the rules of substitution relating to transmissions between co-institutes of the same rank.

1303. The right of beneficiaries of the first rank opens not later than one hundred years after the trust is created, even if a longer term was 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.

No legal person may ever be a beneficiary for a period exceeding one hundred years.

1304. A private or social trust may be perpetual.

SECTION III

ADMINISTRATION OF A TRUST

§ 1.—*Designation and office of the trustee*

1305. A person of full age and having the exercice of his civil rights, except if bankrupt, and a legal person authorized by law, may act as a trustee.

1306. 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.

1307. The settlor may designate one or several trustees or provide modalities for their designation or replacement.

1308. The court may, at the request of an interested person and after notice has been given to the persons it indicates, designate a trustee where the settlor, having manifested his intention of doing so, has nevertheless failed to do so or where it is impossible to designate or replace a trustee.

The court may, similarly, designate an additional trustee where required by the conditions of the administration.

1309. A trustee has the control and the exclusive administration of the trust patrimonium and he may take any appropriate 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*

1310. The beneficiary of a trust created gratuitously must 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 be qualified to receive at the time the right opens to preserve the right of the other beneficiaries if they avail themselves of it.

1311. The beneficiary of a trust must, in order to receive, meet the conditions required by the constituting instrument.

1312. 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 established by gratuitous title, or participate in the benefit that it procures.

1313. The settlor may reserve for himself or confer on the trustee or a third person the power to elect the beneficiaries or determine their shares.

In the case of a social trust, the trustee's power to elect the beneficiaries and determine their shares is presumed. In the case of personal or private trusts, the power to elect may be exercised by the trustee or the third person only if the class of persons from which he may elect the beneficiary is sufficiently determined in the constituting instrument.

1314. The power to elect the beneficiaries or determine their shares is at the discretion of the person exercising it, who may change or revoke his decision if the fulfilment of the trust requires it.

No person having the power to elect beneficiaries may do so for his own benefit.

1315. While the trust is in effect, the beneficiary has, in addition to the rights conferred on him by his power of supervision over the administration of the trustee, only 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.

1316. The beneficiary of a trust established by gratuitous title is presumed to have accepted the right granted to him and he is entitled to dispose of it.

The beneficiary may renounce his right at any time; if he renounces it, he shall do so in writing if he is the beneficiary of a personal or private trust.

1317. Where a beneficiary renounces his right or his right no longer has effect, the right passes, in proportion to the share of each, to the co-beneficiaries of the fruits and revenues or of the capital according as he is the beneficiary of the fruits and revenues or of the capital.

Where a beneficiary is the sole beneficiary of the fruits and revenues of his a rank, his right passes, in proportion to the share of each, to the beneficiaries of the fruits and revenues of the second rank, or failing such beneficiaries, to the beneficiaries of the capital.

§ 3.—*Measures of supervision and control*

1318. The administration of a trust is subject to the supervision of the settlor or his heirs, if he has died, and of the beneficiary, even future.

In addition, in cases provided for by law, the administration of private or social trusts is subject, according to their objects and purposes to the supervision of the persons or bodies designated by law. These persons and bodies are deemed to be interested persons with respect to the rights of action provided for under this subsection.

1319. From the establishment of a private or social trust subject to the supervision of a person or body designated by law, the trustee is required to file with the person or body a trust deed together with a copy of the constituting instrument, an inventory of the movables and a statement of the immovables forming the trust patrimonium.

The trustee is also required, each year, to render an account of his administration and indicate in his report any change made in the trust patrimonium or in the trust. He shall also, at the request of the person or body, allow the trust records to be inspected and furnish any account or report requested of him.

1320. The rights of the beneficiary of a personal trust, if not yet conceived, are exercised by the person designated by the settlor to act as curator and who accepts the office or, failing a curator, by the person appointed by the court at the request of the trustee or any interested person. The public curator may be designated to act.

In a private trust of which no person, even identifiable or future, may be a beneficiary, the rights granted to the beneficiary under this subsection may be exercised by the public curator.

1321. The settlor, the beneficiary or, as the case may be, any other interested person may, notwithstanding any stipulation to the contrary, take action against the trustee to compel him to execute 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 any of the beneficiaries or to have him removed.

The person contemplated in the first paragraph may also impugn any acts performed by the trustee in fraud of the trust patrimonium or the rights of the beneficiary.

1322. The settlor, the beneficiary or, as the case may be, another interested person may, notwithstanding any stipulation to the contrary, 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.

1323. A trustee who participates with the settlor or the beneficiary in any act whose effect is to defraud the creditors of the settlor or trust patrimonium is jointly and severally responsible with them for the fraud.

SECTION IV

CHANGES TO THE TRUST AND TO THE PATRIMONIUM

1324. Any person may increase the trust patrimonium by transferring property to the patrimonium by contract or by will in conformity, in so doing, with the rules applicable to the establishment of a trust. The person does not acquire the rights of a settlor by that fact.

The transferred property is mingled with the trust patrimonium and is administered in accordance with the provisions of the constituting instrument.

1325. Where a trust has ceased to meet the first intent of the settlor, in particular, as a result of circumstances unknown to him or unforeseeable and which make the fulfilment of the trust impossible, 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, for the original object of the trust, another closely related object.

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 and, in particular, allow the trust to be prolonged.

1326. Notice of the application must 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, or to any other person or body designated by law, where the trust is subject to their supervision.

SECTION V

TERMINATION OF A TRUST

1327. A trust is terminated by the renunciation or the lapse of the right of the sole beneficiary of the capital or by the renunciation of the beneficiary of the fruits and revenues or the lapse of his right where no beneficiary of the capital has been designated.

A trust is also terminated by the expiry of the term or the accomplishment of the condition, by the fulfilment of the object of the trust or by the impossibility, ascertained by the court, of fulfilling it.

1328. 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.

1329. 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 or property devoted to a purpose as nearly like that of the trust as possible, designated by the trustee or, failing that, by the court.

TITLE SEVEN

ADMINISTRATION OF THE PROPERTY OF OTHERS

CHAPTER I

GENERAL PROVISIONS

1330. Any person who, by authority of law or by virtue of a legal instrument or owing to circumstances, performs an act of custody, simple administration or full administration in respect of any property or patrimonium that is not his own, assumes the responsibility of an administrator of the property of others.

1331. Unless, pursuant to the law, the instrument or the circumstances, the administration is gratuitous, the administrator is entitled to a remuneration fixed in the instrument or by law or, if not fixed, according to the value of the services rendered or usage.

No person acting without right or authorization is entitled to any remuneration.

CHAPTER II

KINDS OF ADMINISTRATION

SECTION I

CUSTODY OF THE PROPERTY OF OTHERS

1332. Custody of the property of others obliges the custodian to perform all acts necessary for the preservation of the property and return to the beneficiary the identical property of which he had custody.

1333. An administrator charged with custody is not required to collect the fruits and revenues of the property or any debt due, unless that is necessary to prevent prescription.

If an administrator collects any fruit, revenue or debt, he must see to its preservation and return it to the beneficiary.

1334. An administrator charged with custody is not liable for any loss or deterioration of the property that occurs by a fortuitous event or by reason of the decrepitude, perishable nature or the normal and authorized use of the property.

SECTION II

SIMPLE ADMINISTRATION OF THE PROPERTY OF OTHERS

1335. Simple administration obliges the person responsible therefor to perform, in addition to the acts necessary for preservation of the property, any act expedient for maintenance of the use for which the property is ordinarily destined.

1336. An administrator responsible for 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.

Pursuant to the first paragraph, the administrator shall collect the debts that are subject to his administration and give valid discharge for them, and exercise the rights attached to the securities under his administration such as voting, conversion or redemption rights.

1337. An administrator shall continue the use of the property which produces fruits and revenues without changing its destination, except with the authorization of the beneficiary or, if that is prevented, by the court.

1338. An administrator is bound to invest the sums of money that are not required for his administration in accordance with the rules of this title relating to investments presumed to be safe investments.

An administrator may likewise change any investment he makes or those made before he took office.

1339. An administrator may, with the authorization of the beneficiary or, if that is prevented, of the court, alienate the property by onerous title or encumber it with a security where that is necessary for the payment of the debts, maintenance of the property in a good state of repair or preservation of its value.

An administrator may, notwithstanding anything in this article, alienate any perishable property of his own initiative.

SECTION III

FULL ADMINISTRATION OF THE PROPERTY OF OTHERS

1340. Full administration obliges the administrator to preserve the property and make it productive, increase the patrimonium or

appropriate it to a purpose where the interest of the beneficiary or the fulfilment of the object requires it.

1341. An administrator may, to execute his obligations, in particular, alienate the property by onerous title, encumber it with charges or a real right or change its destination and perform any act, including any form of investment, that he considers necessary or expedient.

CHAPTER III

RULES OF ADMINISTRATION

SECTION I

OBLIGATIONS OF THE ADMINISTRATOR TOWARDS THE BENEFICIARY

1342. The administrator of the property of others shall, in exercising his functions, comply with the obligations imposed on him by law or by the constituting instrument and act within the powers conferred on him and in accordance with their object.

1343. An administrator shall act with the care, diligence and competence of a prudent and reasonable person acting in similar circumstances.

1344. An administrator shall act honestly and faithfully in the best interest of the beneficiary or of the object pursued.

1345. No administrator may exercise his powers in his own interest or that of a third person or place himself in a position putting his own interest in conflict with his obligations as administrator.

Notwithstanding the foregoing, where the administrator is himself a beneficiary, he is not bound to subordinate his interest to that of the other beneficiaries.

1346. An administrator shall, on taking office, notify in writing the beneficiary of the interest he has in an undertaking that is apt to place him in a position of conflict of interest and of the rights he has against the beneficiary or in the property administered and indicate, where such is the case, the nature and value of the rights, but he is not bound to do so if the interest or rights derive from the act having given rise to the administration.

An administrator shall, where the beneficiary is a legal person, request that the facts mentioned in the first paragraph be entered in the minutes of the proceedings of the board of directors or in the equivalent record.

Notification is made also to the person or body designated by law where the rights pertain to a trust under the supervision of the person or body.

1347. 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, except by express authorization of the beneficiary or the court in case of impediment or if there is no determined beneficiary.

1348. No administrator may mingle the administered property with his own unless otherwise provided by law.

1349. No administrator may use for his benefit, even indirectly, 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 instrument of the administration.

1350. 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 valid consideration, renounce any right belonging to the beneficiary or forming part of the patrimonium administered.

1351. 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.

1352. The court may, in the appreciation of the responsibility of an administrator, take account of the fact that the person acts gratuitously, that he is a minor or a person of full age under protective supervision or that he was designated by reason of his professional competence.

SECTION II

OBLIGATIONS OF THE ADMINISTRATOR AND BENEFICIARY TOWARDS THIRD PERSONS

1353. The beneficiary or the trust patrimonium is responsible towards third persons for the damage caused by the fault of the administrator in the exercise of his functions.

1354. An administrator is not personally responsible towards third persons with whom he contracts where he binds himself, within the limits of his powers, in the name of the beneficiary or the trust patrimonium.

An administrator is responsible towards third persons if he binds himself in his own name, without prejudice to any rights they may have against the beneficiary or the trust patrimonium.

1355. An administrator is responsible towards third persons with whom he contracts where he exceeds his powers unless he gives the third persons sufficient communication of that fact or unless the obligations contracted have been expressly or tacitly ratified by the beneficiary.

Obligations unlawfully contracted by the administrator or which exceed the powers of the beneficiary legal person are not ratifiable.

1356. An administrator who exercises alone powers that his mandate requires him to exercise jointly with another person is deemed to have exceeded his powers.

An administrator is deemed not to exceed his powers if he exercises them more advantageously than he is required to do.

1357. Where a person has given reasonable cause to believe that another person was the administrator of his property, he is responsible towards third persons who have contracted in good faith with that other person as though the property had been under administration.

SECTION III

INVENTORY, SECURITY AND INSURANCE

1358. An administrator shall draw up an inventory of the movable property and a statement of the immovables, take out liability insurance or furnish security, if the court so orders on the application of the beneficiary or of an interested person.

An administrator bound by the obligations described in the first paragraph under the instrument of his appointment may be dispensed therefrom by the court.

1359. In making its decision, the court having cognizance of the application takes account of the value of the property administered, the situation of the parties and the other circumstances.

The court may grant the application only where that does not revise the terms of the initial agreement between the administrator and the beneficiary.

1360. 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.

An administrator may also take out liability insurance at the expense of the beneficiary or trust.

SECTION IV

JOINT ADMINISTRATION AND DELEGATION

1361. Where several administrators are charged with the administration, a majority of them may act unless the instrument or the law requires them to act jointly or by a specified majority.

1362. 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 also may, with the authorization of the court, act alone for acts requiring immediate action.

Where the situation continues and the administration is seriously impaired by it, the court, on the application of an interested person, may dispense the administrators 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.

1363. Joint administrators are jointly and severally liable for their administration.

Notwithstanding the foregoing, where the duties of joint administrators have been divided by law, the instrument or the court, and they have divided them, each administrator is liable for his own administration only.

1364. An administrator is deemed to have approved any decision made in his presence 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, if any, within a reasonable time.

The administrator of a legal person shall, to be exonerated, require that his dissent be recorded in the minutes of the proceedings or in the record in lieu thereof.

The administrator may be exonerated from responsibility if he proves he had serious reasons for not making his dissent known in due time.

1365. An administrator is presumed not to have approved a decision made in his absence.

1366. An administrator may delegate his duties or be represented by a third person for specific acts; however, no administrator may

delegate generally the conduct of the administration or the exercise of a discretionary power, except to his co-administrators.

An administrator is accountable for the person mandated by him if he knew or should have known the person is incompetent or if he was not authorized to give the mandate.

1367. The beneficiary may repudiate the administration of the person mandated by the administrator who gave the mandate contrary to the instrument or usage if he suffers prejudice from it.

The beneficiary may exercise his rights of action against the mandated person even where the administrator was duly empowered to give the mandate.

SECTION V

PRESUMED SAFE INVESTMENTS

1368. Investments in the following property are presumed safe:

1. immovable property in Québec;

2. bonds or other titles of indebtedness issued or guaranteed by the government of Québec, of Canada or of a province of Canada, of the United States of America or of any such state, by the International Bank for Reconstruction and Development, by a municipal or school corporation in Canada, or by a fabrique in Québec;

3. bonds or other titles of indebtedness issued by a legal person which has as its object the operation of a public service in Canada and which is entitled to impose a tariff for such service;

4. bonds or other titles of indebtedness secured by an undertaking made towards a trustee of the government of Québec, of Canada or of a province of Canada to pay sufficient subsidies to meet the interest and capital on maturity;

5. bonds or other titles of indebtedness issued by a legal person incorporated in Canada:

(*a*) if they are secured by privilege or hypothec ranking first on a corporeal immovable, or by pledge of titles of indebtedness presumed to be safe investments;

(*b*) if they are secured by privilege ranking first on equipment and the legal person has paid in full the interest on its other loans during the ten years preceding the acquisition;

(*c*) if the common shares of the legal person are listed on a Canadian stock exchange and the legal person has, during each of the five years

preceding the acquisition, earned and paid on its common shares a dividend of at least four per cent of their book value;

6. bonds or other titles 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, if it has been specially approved by the Government and whose ordinary operations in Québec consist in making loans to municipal or school corporations and to fabriques, or loans secured by first hypothec on a corporeal immovable situated in Québec;

7. debts secured by corporeal immovables in Canada:

(*a*) if payment of the capital and interest is guaranteed or secured by the government of Québec, of Canada or of 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 or before the debt;

(*c*) if the amount of the loan that exceeds seventy-five per cent of the value of the immovable property securing payment of the loan is guaranteed or secured by the government of Québec, of Canada or of a province of Canada, by the Central Mortgage and Housing Corporation, the Société d'habitation du Québec or by a hypothec insurance policy issued by a corporation holding a permit pursuant to the Act respecting insurance after deduction of the other debts secured by the same immovable and ranking equally or before the debt;

8. fully paid preferred shares, issued by a corporation incorporated in Canada and listed on a Canadian stock exchange, if the corporation has, during each of the five years preceding the acquisition, earned and paid on its outstanding preferred shares a dividend at least equal to the specified rate and on its common shares a dividend of at least four per cent of their book value;

9. fully paid common shares issued by a corporation incorporated in Canada and listed on a Canadian stock exchange, if the corporation has, during each of the five years preceding the acquisition, earned and paid on its common shares a dividend of at least four per cent of their book value;

10. the shares of a private trust the property of which that is available for investment purposes are invested exclusively in presumed safe investments.

1369. No administrator may invest in shares of corporations more than thirty per cent of the total value of the property under his administration.

Nor may the administrator acquire more than five per cent of the shares of the same corporation, or acquire shares, bonds or other titles of indebtedness of a legal person which has defaulted payment of prescribed dividends on its shares or interest on its bonds or other securities or grant a loan to such a legal person.

1370. An administrator may deposit the sums of money entrusted to him with a bank, savings bank, trust company, société d'entraide économique or a savings and credit union, if the deposit is repayable on demand or on thirty day's notice.

1371. An administrator may maintain the investments existing upon his taking office even if they are not presumed safe investments.

If, following the reorganization or the winding-up of a legal person or the amalgamation of several legal persons, the securities held by an administrator are replaced by other securities, he may also continue to hold them.

1372. An administrator who makes an investment or acts in accordance with this section is deemed to be acting as a prudent administrator.

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.

1373. Investments made in the course of administration must be made in the name of the administrator acting in his capacity.

SECTION VI

APPORTIONMENT OF PROFIT AND EXPENDITURE

1374. Apportionment of profit and expenditure between the beneficiary of the fruits and revenues and the beneficiary of the capital is made in accordance with the stipulations and evident intention of the constituting instrument.

Failing sufficient indication in the instrument, apportionment is made as equitably as possible, taking into account the purpose and object of the administration, the circumstances having given rise to it and generally recognized accounting principles.

1375. Insurance premiums, minor repair expenses and other current administration expenditures and, in particular, the following expenses are generally debited from the revenues:

1. one-half of the remuneration of the administrator and his reasonable expenses for joint administration of the capital and fruits and revenues;

2. taxes payable on the administered property;

3. costs paid to safeguard the rights of the beneficiary of the fruits and revenues and one-half of the costs of the judicial rendering of account, unless the court orders otherwise;

4. amortization of the property, except property used by the beneficiary for personal purposes.

An administrator may, to maintain a regular income, spread substantial expenses over a reasonable period.

1376. Expenditures 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 are debited from the capital.

Taxes on gains and other amounts attributable to capital, even if the law governing such taxes considers them to be income taxes, and any succession duty which affects the administered property, even if the beneficiary of the fruits and revenues also has rights in the capital, are also debited from the capital.

1377. The beneficiary of the fruits and revenues is entitled to the net income of the administered property from the date determined in the instrument 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.

1378. Revenues payable periodically are counted per diem.

Dividends and distributions of a legal person are due from the date fixed by the legal person as the date of registration in the register of members or, failing this, from the date the distribution is declared.

1379. 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.

Notwithstanding the foregoing, the beneficiary is not entitled to the dividends of a legal person that were not declared during the period his right existed.

SECTION VII

ANNUAL ACCOUNT

1380. An administrator shall render an account of his administration to the beneficiary at least once a year.

1381. The account must be sufficiently detailed to allow verification of its accuracy.

Except in the case of the account of the administrator of a legal person, any interested person may, on a rendering of account, apply to the court to order the account audited by an expert in accordance with the Code of Civil Procedure.

1382. Where there are several administrators, they shall render one and the same account unless their duties have been divided by law, the instrument or the court, and the division has been made.

1383. An administrator shall at all times allow the beneficiary or, if the beneficiary is a legal person, the members to examine the books and vouchers relating to the administration.

CHAPTER IV

TERMINATION OF ADMINISTRATION

SECTION I

CAUSES TERMINATING ADMINISTRATION

1384. 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.

1385. Administration is terminated

1. by extinction of the right of the beneficiary in the administered property;

2. by expiration of the term or fulfilment of the condition prescribed in the instrument giving rise to the administration;

3. by achievement of the object of the administration or disappearance of the cause having given rise to it;

4. by the dissolution of the beneficiary legal person.

1386. An administrator may resign at any time 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. Failing such persons or where it is impossible to give notice to such persons, the notice is 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 public trust or social trust shall also notify his resignation to the person or body designated by law to supervise his administration.

1387. The resignation of an administrator takes effect on the date the notice is received or on a later date indicated in the notice.

1388. An administrator is liable for any damage caused by his resignation where it is submitted without valid reason and at an inopportune moment or where it amounts to failure of duty.

1389. 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 move the replacement of an administrator who is unable to discharge his duties or does not fulfil his obligations.

1390. Upon the death of the administrator, the liquidator of his succession, if he is aware of the administration, shall notify 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 shall also do, in respect of any matter under way, all that is immediately necessary to prevent a loss; he shall also render account and deliver over the property to those entitled to it.

1391. Obligations contracted towards third persons in good faith by an administrator who is unaware that his administration has terminated are valid and oblige the beneficiary or the trust patrimonium; the same rule applies to obligations contracted by the administrator after his administration has terminated if they are a necessary consequence of the administration or are required to prevent a loss.

The beneficiary or the patrimonium 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 THE PROPERTY

1392. On termination of his administration, an administrator shall render a final account of his administration to the beneficiary and, where such 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 in case of divided duties.

The account must be sufficiently detailed to allow verification of its accuracy; the books and other vouchers pertaining to the administration may be consulted by interested persons.

1393. 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.

1394. An administrator shall deliver the administered property at the place agreed upon or, failing that, where it is.

1395. An administrator shall deliver over all that he has received in the performance of his duties even if what he has received is not due to the beneficiary or to the trust patrimonium; 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 patrimonium for his use by paying an appropriate rent or the interest on the money from the date when the property was used.

1396. Administration expenses, including the cost of rendering account and delivering the property, are borne by the beneficiary or patrimonium.

The resignation or replacement of the administrator obliges the beneficiary or trust patrimonium to pay, apart from the administration expenses, any remuneration earned and damages which may be due to him, *inter alia,* for a replacement made at an inopportune moment.

1397. 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 patrimonium owes interest only from the formal notice.

1398. An administrator is entitled to deduct from the sums he is required to remit what the beneficiary or patrimonium owes him by reason of the administration.

An administrator may detain the administered property until payment of what is owed to him.

1399. Where there are several beneficiaries, their obligation towards the administrator is joint and several."

2. This Act shall operate notwithstanding the provisions of sections 2 and 7 to 15 of the Constitution Act, 1982 (Schedule B of the Canada Act, chapter 11 in the 1982 volume of the Acts of the Parliament of the United Kingdom).

3. This Act will come into force at the time and according to the modalities to be fixed in the Act to implement the reform of the law of persons, of successions, and of property.

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