THIRD SESSION

THIRTY-SECOND LEGISLATURE

NATIONAL ASSEMBLY OF QUÉBEC

Bill 107

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

First reading .....

Second reading .....

Third reading .....

M. MARC-ANDRÉ BÉDARD

Minister of Justice

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EXPLANATORY NOTES

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

Title One of Book Three determines the circumstances in which a succession opens and the qualifications of an heir.

Title Two deals with successoral rights, and comprises two chapters, the first dealing with seizin and its effects on the transfer of property, and the second, with the heir's right of option, laying down the rules on deliberation and option, acceptance pure and simple, acceptance under benefit of inventory and renunciation.

Title Three establishes the rules on legal devolution. The first of its five chapters determines heirship. Chapter II deals with relationship, determining degrees, generations, direct lines, collateral lines, lines of ascent and lines of descent. Chapter III defines representation, determines when it operates and specifies its effects. Chapter IV establishes who are entitled to inherit and their order of succession, and Chapter V deals with devolution to the State.

Title IV, which is divided into six chapters, deals in turn with the nature of a will, the capacity required to make a will, the forms of wills, testamentary dispositions, revocation of wills and proof and probate of wills.

Title V, which has four chapters, lays down the rules on the liquidation of successions. Chapter I deals with the object of the liquidation and the separation of the patrimoniums. Chapter II deals with the liquidator of the succession and establishes the rules on the appointment, office and functions of the liquidator. Chapter III deals with payment of the debts and the particular legacies, and contains rules on the time and mode of payment and on liability for payment. Chapter IV regulates the conditions in which liquidation ends and determines the rules on the rendering of account.

Title VI, comprising five chapters, contains the rules on partition. It deals with entitlement to partition and to undivided ownership, establishes the modalities of partition and lays down the rules to be followed in making up the shares, making allotments by preference and making delivery of titles, and determines the obligation to return gifts, legacies and debts and the manner and the effects of returning them. The final two chapters deal with the effects of partition, the warranty of copartitioners and nullity of partition.

Bill 107

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

HER MAJESTY, with the advice and consent of the National Assembly of Québec, enacts as follows:

1. Book Three is added to the Civil Code of Québec, established by chapter 39 of the statutes of 1980, after article 659 at the end of Book Two, "The Family", and reads as follows:

BOOK THREE

SUCCESSIONS

TITLE ONE

OPENING OF SUCCESSIONS AND QUALIFICATION FOR HEIRSHIP

CHAPTER I

OPENING OF SUCCESSIONS

660. The succession of a person devolves by his death, at the place of his domicile.

The succession devolves according to the prescriptions of law unless the deceased has, by testamentary dispositions, provided otherwise for the devolution of his property. Gifts *mortis causa*, including contractual institution, are, in that respect, testamentary dispositions.

661. In determining succession, the law considers neither the origin nor the nature of property.

All the property constitutes a single succession which is transmitted according to law or in keeping with the wishes of the deceased.

662. When a succession devolving by law or by notarial will includes property situated outside Québec or claims against persons not resident in Québec, letters of verification may be obtained in the manner provided in the Code of Civil Procedure.

663. If a person entitled to inherit from another dies and it is not possible to determine whether he survived the other, he is deemed to have died at the same time as the other and is excluded from the succession.

CHAPTER II

QUALIFICATION FOR HEIRSHIP AND FOR RECEPTION OF PARTICULAR LEGACIES

664. Human persons who exist at the time the succession devolves may inherit, as may absentees and children conceived but yet unborn, if they are born alive and viable.

The state may inherit as well.

665. Legal persons and persons in mortmain may receive by will such property as they may legally hold.

A trustee may receive by will if the legacy is intended for a person who is a beneficiary of the trust or if it is used to accomplish an object contemplated by the trust.

666. Persons entitled to inherit to whom an intestate succession devolves and universal legatees or legatees by general title are heirs from the opening of the succession.

667. In the case of a conditional legacy, substitution or trust, the person who receives the legacy need have the qualities required to inherit only at the time the condition is realized or the provision takes effect in his favour.

668. The following persons are disqualified *pleno jure* from inheriting:

1. a person found guilty of making an attempt on the life of the deceased;

2. a person deprived of parental authority over his child, with respect to that child's succession, when the child was exempted from the obligation of providing support to him.

669. The following persons may be declared unworthy of inheriting:

1. a person guilty of cruelty or of a serious offence against the deceased;

2. a person who has concealed, altered or destroyed in bad faith the will of the deceased;

3. a person who had hindered the testator in the writing, admendment or revocation of his will;

4. a person who, having had knowledge of the murder of the deceased, did not inform the proper law authorities.

670. An heir is not disqualified *pleno jure* and shall not be declared unworthy if the deceased knew the cause of the disqualification or unworthiness and the identity of the heir and yet made him benefit or did not show less generosity towards him when he could have done so.

671. Any person entitled to inherit may, within one year after the opening of the succession or becoming aware of a cause of unworthiness, apply to the court to declare an heir unworthy.

672. A spouse in good faith inherits from his spouse if the marriage is annulled after the death of the latter, unless the spouse himself made the application or unless the court, in declaring nullity, decides otherwise in view of the circumstances.

673. To receive a particular legacy, a particular legatee must have the same qualities as are required of an heir.

674. A person is always entitled to have heirship recognized within seven years from the opening of the succesion to which he claims to be entitled.

TITLE TWO

SUCCESSORAL RIGHTS

CHAPTER I

SEIZIN AND ITS EFFECTS ON THE TRANSMISSION OF PROPERTY

675. The heir and the particular legatee are seized, by the death of the deceased or by the event which gives effect to the legacy, of the rights and obligations of the deceased respecting the property left or bequeathed, subject to the provisions regarding the successoral liquidation.

676. If there are several heirs, the succession remains undivided as long as the liquidation of the succession has not taken place.

Indivision in this case is governed by the provisions of Book Four except the special rules on the liquidation and partition of successions.

677. An heir apparent must restore to the true heir what he has received from the succession.

If he is unable to remit the property, he must restore the price he has received from the alienation of the property, or the property acquired through reinvestment.

678. An heir apparent in bad faith may be bound to restore to the true heir the value at the time of the judgment of the property alienated, in addition to damages.

679. An heir apparent, if in good faith, acquires the fruits; if in bad faith, he must return them from the time of the death.

680. Acts of administration performed by an heir apparent to the benefit of a third person may be set up against the true heir.

681. Acts of alienation by onerous title performed by an heir apparent to the benefit of a third person in good faith may be set up against the true heir. The same applies to acts by gratuitous title, subject to the rules on prescription.

682. A person who is disqualified from inheriting or declared unworthy to inherit is, if he has received property from the succession, deemed an apparent heir in bad faith.

CHAPTER II

THE RIGHT OF OPTION

SECTION I

DELIBERATION AND OPTION

683. Every person entitled to inherit a succession has the right to accept it or to renounce it.

The option is indivisible.

684. A person entitled to inherit has six months to deliberate and exercise his option from the date the succession devolves to him; during that period, no judgment may be rendered against him as an heir unless he has accepted the succession.

685. A succession may be accepted either purely and simply or with benefit of inventory.

Acceptance renders the transmission which took place *pleno jure* at the time of death irrevocable.

686. A person entitled to inherit may accept the succession with benefit of inventory or renounce it, provided he has not performed any act entailing pure and simple acceptance, and provided no judgment having the force of *res judicata* has been rendered against him as a pure and simple heir.

687. If a person entitled to inherit and aware of his heirship does not accept with benefit of inventory or renounce within the period for deliberation, he is deemed to have accepted purely and simply unless the court has extended the period.

If a person entitled to inherit was unaware of his heirship, he may be constrained to exercise his option within the time determined by the court.

688. If the person entitled to inherit accepts with benefit of inventory or renounces within the period for deliberation, the lawful expenses incurred to that time are borne by the succession.

689. If a person entitled to inherit dies before exercising his option, his heirs have a new three-month period from the time of his death to deliberate and exercise their option.

The option of an heir of the person entitled to inherit is valid for his share alone.

690. A particular legatee has no option but to accept purely and simply or renounce. However, if the will imposes debts and charges of uncertain extent, the particular legatee may accept under benefit of inventory.

691. A person may cause his option to be cancelled on one of the grounds of nullity of contracts, particularly on the discovery of a will he was unaware of when he exercised his option.

SECTION II

PURE AND SIMPLE ACCEPTANCE

692. Pure and simple acceptance is express or tacit.

693. A person who transfers his rights in a succession by gratuitous or onerous title is deemed to have accepted the succession.

The same rule applies with respect to renunciation in favour of one or more of his coheirs, even by gratuitous title, and to renunciation by onerous title, even in favour of all his coheirs without distinction.

694. A person entitled to inherit who has abstracted or concealed property of a succession or who in bad faith has failed to include property in the inventory of a succession is deemed a pure and simple heir notwithstanding any prior or subsequent renunciation or acceptance with benefit of inventory.

695. Mere conservatory acts and acts of supervision and provisional administration, particularly the payment of funeral expenses and of the costs incurred during the final illness, do not, by themselves, entail acceptance of the succession.

The same rule applies to an act rendered necessary by exceptional circumstances which the person entitled to inherit performs in the interest of the succession.

696. The partiton of the medals, diplomas, clothing and private papers of the deceased do not entail acceptance if all the heirs agree to it.

697. A person entitled to inherit who has accepted the transmission in his favour of a cemetery lot or a family crypt is not deemed to have accepted the succession.

698. If a succession includes perishable goods, the person entitled to inherit may, before a liquidator is designated, alienate them by agreement without implying acceptance on his part.

He may sell moveable property that is costly to preserve by following the rules in the Code of Civil Procedure.

SECTION III

ACCEPTANCE WITH BENEFIT OF INVENTORY

699. Acceptance with benefit of inventory must be express. It is made by notarial deed *en minute*.

700. Unless the inventory is made by the liquidator of the succession, the beneficial heir must make it within two months of accepting or within any other time determined by the court; otherwise, he is deemed to have accepted purely and simply.

701. In no case may a succession which devolves to a person under tutorship or curatorship be accepted by the tutor or curator except with benefit of inventory; however, if it is clear that the succession is very profitable or shows a deficit, the tutor or curator may accept it purely and simply or renounce it with the authorization of the tutorship council.

702. An heir who accepts with benefit of inventory is not excluded by an heir who offers to accept purely and simply.

703. The beneficiary heir may renounce the benefit of inventory at any time, even tacitly, and become a pure and simple heir.

704. Acceptance with benefit of inventory entitles the heir not to be liable for payment of the debts of the succession except out of the property he receives and, during the liquidation, not to confound his personal property with that of the succession and to retain the right to demand payment of his claims against the succession.

A particular heir who accepts with benefit of inventory has the same rights.

705. An heir forfeits the benefit of inventory if, before the inventory, he confounds the property of the succession with his own property, unless there was confusion of the property before the death, particularly in the case of cohabitation.

SECTION IV

RENUNCIATION

706. Renunciation must be express. It is effected by notarial deed *en minute* or by judicial declaration in writing.

707. A person who renounces is deemed never to have been an heir; the succession devolves as if he had never existed.

708. A person entitled to inherit who has renounced the succession retains, for seven years from the opening of the succession, the right to accept it if it has not already been accepted by another person entitled to it.

Acceptance is then made by notarial deed *en minute* or by judicial declaration in writing.

The heir takes the succession in the state in which it then is, and without prejudice to the rights acquired by third parties to the property in it.

709. A person entitled to inherit who has remained unknown and has neither accepted nor renounced within seven years of the opening of the succession is deemed to have renounced.

710. If a person renounces to the prejudice of the rights of his creditor, the court may, within one year of the renunciation, authorize the creditor to accept the succession in the place of his debtor.

The acceptance has effect only in favour of the creditor who has applied for it, and only up to the amount of his claim. It has no effect in favour of the person who has renounced.

TITLE THREE

LEGAL DEVOLUTION OF SUCCESSIONS

CHAPTER I

HEIRSHIP

711. Unless otherwise provided by testamentary dispositions, a succession devolves to the surviving spouse and relatives or, failing them, to the State, in the order and according to the rules laid down in this title.

712. The surviving spouse's heirship is not dependent on the renunciation of his matrimonial rights and benefits.

CHAPTER II

RELATIONSHIP

713. Relationship is based on ties of blood or of adoption.

714. Proximity of relationship is established by the number of generations, each generation forming one degree. The series of degrees forms the direct line or the collateral line.

715. The direct line is the series of degrees between persons descended one from another.

The number of degrees in the direct line is equal to the number of generations between the heir and the deceased.

716. The direct line of descent connects a person with his descendants; the direct line of ascent connects him with his ancestors.

717. The collateral line is the series of degrees between persons descended not one from another but from a common ancestor.

In the collateral line, the number of degrees is equal to the number of generations between the heir and the common ancestor, and between the common ancestor and the deceased.

CHAPTER III

REPRESENTATION

718. Representation is a fiction of the law, the effect of which is to put the representative in the place, degree or right of the person represented.

719. There is no limit to representation in the direct line of descent.

Representation is allowed whether the children of the deceased compete with the descendants of a predeceased child, or whether, all the children of the deceased being deceased or unworthy, the descendants are in equal or unequal degrees in relation to each other.

720. Representation does not take place in favour of ascendants.

721. In the collateral line, representation takes place in favour of the descendants of the brothers and sisters of the deceased, whether they compete with them or whether, all the brothers and sisters of the deceased being deceased or unworthy, they are in equal or unequal degrees in relation to each other.

722. Representation takes place when the person represented died previously or simultaneously or is unworthy.

723. No person who has renounced a succession may be represented, but the person whose succession has been renounced may be represented.

724. In all cases where representation is permitted, partition is effected by roots.

If one root has several branches, the subdivision as well is made by roots in each branch, and the members of the same branch share among themselves by heads.

CHAPTER IV

DESIGNATION OF PERSONS ENTITLED TO INHERIT

DIVISION I

DEVOLUTION TO THE SURVIVING SPOUSE AND TO DESCENDANTS

725. If the deceased leaves a spouse and descendants, the succession devolves to them. The spouse receives one-third and the descendants receive the other two-thirds.

726. Where there is no spouse, the entire succession devolves to the descendants.

727. If the descendants who inherit are all of the same degree and in their own right, they share in equal portions and by heads.

If there is representation, they share by roots.

DIVISION II

DEVOLUTION TO THE SURVIVING SPOUSE AND TO PRIVILEGED ASCENDANTS OR COLLATERALS

728. The father and the mother of the deceased are privileged ascendants.

The brothers and sisters of the deceased and their descendants are privileged collaterals.

729. Where there are no descendants nor privileged ascendants or collaterals, the entire succession devolves to the surviving spouse.

730. If there are no descendants, two-thirds of the succession devolves to the surviving spouse and one-third to the privileged ascendants.

731. If there are no descendants nor privileged ascendants, two-thirds of the succession devolves to the surviving spouse and one-third to the privileged collaterals.

732. If there are no descendants nor surviving spouse, one half of the succession devolves to the privileged ascendants, and the other half devolves to the privileged collaterals.

If there are no privileged ascendants, the privileged collaterals inherit the entire succession.

If there are no privileged collaterals, the privileged ascendants inherit the entire succession.

733. Where the privileged ascendants inherit, they share equally.

If only one of the privileged ascendants inherits, he also receives the share that would have devolved to the other.

734. Where the privileged collaterals who inherit are all born of the same union, they share equally or by roots, as the case may be.

If the privileged collaterals are born of different unions, the portion devolved to them is divided in halves between the paternal line and the maternal line of the deceased; persons fully related by blood partake in both lines and those half related by blood partake in their own line only.

If the privileged collaterals are in one line only, they inherit the entire succession to the exclusion of all the ordinary ascendants and collaterals in the other line.

DIVISION III

DEVOLUTION TO ORDINARY ASCENDANTS AND COLLATERALS

735. The ordinary ascendants and collaterals are not entitled to inherit unless there are no spouse or descendants nor privileged ascendants or collaterals of the deceased.

736. So far as the ordinary ascendants and descendants are concerned, one half of the succession devolves to the ascendants and the other half devolves to the collaterals.

Where there are no ascendants, the collaterals inherit the entire succession.

Where there are no collaterals, the ascendants inherit the entire succession.

737. The share devolving to the ordinary ascendants of the deceased is divided in halves between the paternal line and the maternal line.

The ascendant most closely related receives the portion accruing to his line, to the exclusion of all others; if there are several ascendants of the same degree, in the same line, they succeed by heads.

738. The share which devolves to the ordinary collaterals of the deceased is divided in halves between the paternal line and the maternal line.

The collateral most closely related receives the portion accruing to his line, to the exclusion of all others; if there are several collaterals in the same degree and the same line, they succeed by heads.

739. If there are no relatives within the degree qualified to inherit in one line, the relatives in the other line inherit the entire succession.

740. Relatives beyond the seventh degree do not inherit.

CHAPTER V

DEVOLUTION TO THE STATE

741. The state receives the succession where all the other persons entitled to inherit have renounced the succession or where no other person entitled to inherit is known or claims the succession.

The state may also receive by will, but in no case may it be exheredated.

742. Seisin of the state in respect of a succession devolving to it is exercised by the public curator until the lapse of seven years from devolution.

No property of a succession may be confounded with the property of the state so long as it remains under the administration of the public curator.

743. Subject to the Acts respecting public curatorship and without any other formality, the public curator shall act as liquidator of the succession. He must make an inventory and give notice of the devolution in the *Gazette officielle du Québec*.

744. The state is not liable for the debts and charges of a succession or legacy beyond the amount of the benefit.

745. At the end of the liquidation, the public curator shall render an account to the Minister of Finance.

The public curator shall give notice of the liquidation in the *Gazette officielle du Québec*, indicate the residue of the succession and the time, which must not be less than seven years from the devolution of the succession, within which every other person entitled to inherit may assert his rights as an heir.

746. After the rendering of account, the simple administration of the property of the succession is vested in the public curator on behalf of the state.

The public curator retains the administration until an heir appears to claim the succession, or until the lapse of seven years from devolution or, again, if an action to bring a petition of heirship has been served on the public curator during that time, until the action is decided.

747. The heir who claims the succession takes it in the condition in which it then is, subject to his right to claim damages if the legal formalities have not been followed.

TITLE FOUR

WILLS

CHAPTER I

THE NATURE OF WILLS

748. Every person having the required capacity may, by will, provide otherwise than as in the law for the transfer upon his death of all or part of his property.

749. A will is a unilateral and revocable juridical instrument drawn up in one of the forms provided for by law, by means of which the testator disposes by liberality of all or part of his property, to take effect after his death.

In no case may a will be made in the same instrument by two or more persons.

750. A will may contain only dispositions regarding the successoral liquidation or the revocation of previous testamentary dispositions.

751. No person, even in a marriage contract, except within the limits provided in article 823 of the Civil Code of Lower Canada, may renounce his right to make a will, to dispose of his property in contemplation of death or to revoke his testamentary dispositions.

CHAPTER II

THE CAPACITY REQUIRED TO MAKE A WILL

752. The capacity of the testator is considered relatively to the time of making his will.

753. No minor, even if emancipated by his tutor or by the court, may dispose of any part of his property by will, except small articles of little value; however, a minor emancipated by marriage may make a will.

754. The will of a person of full age, subsequent to his being placed under tutorship, may or may not be confirmed according to the nature of its dispositions and the circumstances in which it was drawn up.

755. No person of full age under tutorship may make a will. A person of full age provided with an adviser may make a will without assistance.

756. No tutor, curator or adviser may make a will on behalf of the person whom he represents or assists, either alone or jointly with that person.

CHAPTER III

FORMS OF WILLS

SECTION I

GENERAL PROVISIONS

757. No person may make any will except a notarial will, a holograph will or a will made in the presence of witnesses.

758. The formalities governing the various kinds of wills must be observed on pain of absolute nullity.

Nevertheless, if a will made in one form is null by reason of inobservance of a compulsory formality, it is valid in another form if it meets the requirements of that other form.

759. A will that may be null by reason of inobservance of a compulsory formality may nevertheless be a valid will if the court believes after hearing the witnesses that the writing certainly and unequivocally contains the last wishes of the deceased.

760. No person may subject the validity of the will he intends to make to any formality not required by law.

761. No person may exclude his heir from his succession, unless the act excluding the heir is in the form of a will.

SECTION II

NOTARIAL WILLS

762. A notarial will is made before a notary *en minute*, assisted by a witness. It must be signed by the testator, the notary and the witness in each other's presence and after it has been read.

763. A notarial will is read by the notary to the testator alone or, if the testator chooses, in the presence of a witness. Once the reading is done, the testator must declare in the presence of a witness that the instrument read contains the expression of his last wishes.

764. The formalities governing notarial wills are presumed to have been observed even when this is not expressly stated, subject to the provisions of the Notarial Act and any special formalities regarding certain wills.

Where there are special formalities, their cause and the fact that they have been observed must be mentioned in the instrument.

765. The notarial will of a testator unable to sign must contain his declaration that he cannot sign. This declaration, also, must be read by the notary to the testator in the presence of two witnesses, and compensates for the absence of a signature.

766. In the case of the notarial will of a blind person, the notary shall read the will to the testator in the presence of two witnesses.

The will must contain a declaration by the notary that he has read the will in the presence of the witnesses, and the declaration also must be read.

767. In the case of the notarial will of a deaf person or a deaf mute, the testator himself reads his will in the presence of the notary alone, or, if he chooses, in the presence of the notary and a witness. A person who is only deaf reads it aloud.

The will must contain a declaration by the testator that he has read his will in the presence of the notary and, where such is the case, a witness.

The declaration also must be read by the notary to the testator in the presence of a witness, in the case of a deaf mute, or by the deaf person, aloud, in the presence of the notary and a witness.

768. Any person unable to express himself aloud who wishes to make a notarial will must convey his wishes to the notary in writing.

769. A witness called upon to be present at the making of a notarial will must be named and designated in the will.

Any person of full age may witness a notarial will except an employee of the attesting notary, other than another notary.

770. In no case may a notarial will be made before a notary who is the spouse of the testator or is related to him by blood or marriage in either the direct or the collateral line up to and including the third degree.

771. The notary before whom a will is made may be designated in the will as the liquidator, provided he receives no remuneration for that office.

SECTION III

HOLOGRAPH WILLS

772. A holograph will must be written entirely by the testator with his own hand and signed by him.

It is subject to no other form.

773. A will written by a mechanical process is not valid as a holograph will.

SECTION IV

WILLS MADE IN THE PRESENCE OF WITNESSES

774. A will made in the presence of witnesses is written by hand or by a mechanical process by the testator or by a third person.

The testator then declares in the presence of two witnesses that the document he is presenting is his will. He need not divulge its contents. He must sign his name or his mark at the end or, if he

has already signed it, acknowledge and confirm his signature; he may also cause a third person to sign it for him in his presence and according to his instructions.

The witnesses then sign the will in the presence of the testator.

775. Where the will is written by a third person or by a mechanical process, the testator and the witnesses must also initial or sign each page of the instrument which does not bear their signature.

776. The witnesses are subject to the rules governing notarial wills.

777. A person who does not know how to read or who cannot read is unable to make a will in the presence of witnesses.

778. A person unable to speak but able to write may make a will in the presence of witnesses, provided he indicates by writing with his own hand, in the presence of the witnesses, that the writing he is presenting is his will.

CHAPTER IV

TESTAMENTARY DISPOSITIONS

SECTION I

VARIOUS KINDS OF LEGACIES

779. A testamentary disposition of property constitutes a universal legacy, or a legacy by general title or by particular title.

780. A universal legacy entitles one or more persons to receive an entire succession.

781. A legacy by general title entitles one or more persons to receive

1. the ownership of an aliquot share of the succession or of the whole or an aliquot share of the immovable or movable property, or

2. the usufruct of the whole or an aliquot share of the succession or of the whole or an aliquot share of the immovable or movable property.

782. All other legacies are by particular title.

783. The exception of particular things, whatever their number or value, does not destroy the character of a universal legacy or of a legacy by general title.

784. Property left by the testator for which he made no disposition or respecting which the dispositions of his will are without effect, remains in his intestate succession and devolves to the persons entitled to inherit designated by law.

785. Testamentary dispositions made under the name of an appointment of heir, a gift or a legacy, or in other terms indicating the intentions of the testator, have effect according to the rules laid down in this chapter with regard to universal legacies, legacies by general title or legacies by particular title.

SECTION II

THE EFFECT OF LEGACIES

786. Fruits from the thing bequeathed accrue to the benefit of the legatee from the opening of the succession or the time when the disposition takes effect.

787. A thing bequeathed is delivered, with its dependencies, in the condition in which it was when the testator died.

This is also the case, when securities are bequeathed, with respect to the rights attached to them if they have not yet been exercised.

788. Where immovable property is bequeathed, any dependent, contiguous or annexed immovable property acquired by the testator after signing the will is presumed to be included in the legacy, provided the property forms a unit with the immovable bequeathed.

Similarly, the bequest of a business concern is presumed to include the operations acquired or created after the signing of the will which, at the time of the death, make up an economic unit with the business concern bequeathed.

789. Where the payment of a legacy is subject to a term, the legatee nevertheless has an acquired right from the death of the testator which is transmissible to his own heirs.

This is also the case where a legacy is made under a condition, except the effect attached to the fulfilment of the condition or the purely personal nature of the condition.

790. Representation takes place in testamentary successions in the same manner as in intestate successions, unless it is excluded by the testator either expressly or by the effect of the dispositions of the will.

However, there is no representation in the matter of particular legacies unless the testator has so stipulated.

SECTION III

LAPSE AND NULLITY OF LEGACIES

791. A legacy lapses when the legatee does not survive the testator, except where there may be representation.

A legacy lapses also when the legatee repudiates it, is unable to accept it, or dies before the fulfilment of the suspensive condition attached to it, if the fulfilment of the condition is connected with the person of the legatee.

792. A legacy also lapses if the thing bequeathed perished totally during the lifetime of the testator or before the opening of a legacy made under a suspensive condition.

If the loss of the thing occurs at the death of the testator or at the opening of the bequest, the insurance indemnity is substituted for the thing destroyed, if it has not been paid to the insured.

793. When a legacy charged with another legacy lapses from a cause depending on the legatee, the subsidiary legacy does not lapse if the charge is a real charge.

The legacy is then deemed to constitute a separate bequest and a charge upon the heir or legatee who receives whatever was bequeathed under the lapsed legacy.

794. Where a legacy made to a liquidator has no other cause than his remuneration, it lapses if he does not accept the office.

This is also the case where a legacy is made to remunerate the person appointed by the testator as tutor to a minor child.

795. A remunerative legacy is cancelled where the liquidator or the tutor ceases to hold office as such; however, he has in this case a right to remuneration proportionate to the value of the legacy and the time for which he held the office.

796. Accretion takes place in favour of the particular legatees when a thing is bequeathed to them jointly and a lapse occurs with regard to one of them.

797. A legacy is presumed to be made jointly if it is made by one disposition and if the testator has not allotted each coparcener's share of the thing bequeathed.

Indication of equal aliquot shares in the partition of the thing bequeathed by a joint disposition does not preclude accretion.

798. A legacy is also presumed to be made jointly when the entire thing is bequeathed by the same act to several persons separately.

799. A condition that is impossible or that is contrary to public order is deemed null.

800. A penal clause intended to prevent an heir or particular legatee from contesting the validity of all or part of the will is deemed null.

The same applies to an exheredation if it takes the form of a penal clause intended for the same purpose.

801. A testamentary disposition limiting the rights of a surviving spouse in the event of remarriage is void.

However, the testator may stipulate that the surviving spouse will have, during widowhood only, a pension or annuity, the income from a trust, the usufruct or the right of use or habitation of a property.

802. A legacy made in a notarial will to the notary, to one of his relatives in the first degree, to his spouse or to the witness has no effect, but the other provisions of the will subsist. The same applies even when there are additional witnesses.

803. In a notarial will, a legacy made in favour of the designated liquidator or the trustee is, to the extent that it exceeds his remuneration, void if he acted as witness.

804. In a will made in the presence of witnesses, a legacy made to the witnesses, even additional witnesses, is void, but the other provisions of the will subsist.

805. A legacy of a thing belonging to another has no effect, unless it appears that the intention of the testator was to oblige the heir or the legatee to obtain the thing bequeathed for the legatee.

806. If the execution of a charge becomes too onerous for the legatee, the court may, after hearing the interested persons, modify or revoke the charge, taking into account the value of the legacy, the intention of the testator and the circumstances.

CHAPTER V

REVOCATION OF WILLS AND LEGACIES

807. Revocation of a will or of a legacy is express or tacit.

808. Express revocation is made by a subsequent will explicitly declaring the change of intention.

Revocation does not cease to be express even if it does not specifically refer to the revoked instrument.

809. A will that revokes another will may be made in a different form from that of the revoked will.

810. The destruction, tearing or erasure of a holograph will or of a will made in the presence of witnesses entails revocation, unless it is established that this was not done deliberately by the testator or on his instructions.

This is also the case where the testator was aware of the destruction or loss of the will and could have replaced it, had he wished.

811. A subsequent testamentary disposition similarly entails tacit revocation of a previous disposition to the extent that they are inconsistent.

The revocation retains its full effect even if the subsequent disposition lapses.

812. Voluntary or forced alienation of a thing bequeathed, even when made under a resolutive condition, suspensive condition or by exchange, also entails revocation with regard to everything that has been alienated, unless the testator has provided otherwise.

Revocation subsists even if the thing alienated has been taken back into the patrimonium of the testator, unless contrary intention is proved.

If the forced alienation of the thing bequeathed is annulled, it does not entail revocation.

813. Revocation of a previous express or tacit revocation does not revive the original disposition, unless the testator manifested a contrary intention or unless such intention may be drawn from the circumstances.

CHAPTER VI

PROOF AND PROBATE OF WILLS

814. A holograph will or a will made in the presence of witnesses is probated, on application by any interested person, in the manner prescribed in the Code of Civil Procedure.

The heir or the particular legatee need not be summoned to the probate of the will unless so ordered by the court.

815. It is the responsibility of the person availing himself of a holograph will or a will made in the presence of witnesses to prove its existence and contents.

816. With the exception of a notarial will, proof of a will by testimony is admissible if the will cannot be produced either because it has been lost or destroyed, or because it is in the possession of a third person, without the collusion of the person who wishes to avail himself of it.

817. In no case may a will that is not produced be probated; it must be reconstituted following an action to which the particular heirs and legatees have been impleaded and the proof of its contents must be certain and unequivocal.

TITLE V

LIQUIDATION OF SUCCESSIONS

CHAPTER I

OBJECT OF LIQUIDATION AND SEPARATION OF PATRIMONIUMS

818. The liquidation of an intestate or testate succession consists in identifying and designating the persons entitled to inherit, determining the content of the succession, recovering the claims, paying the debts, charges and particular legacies, taking into account the report of gifts and legacies, and proposing partition, where such is the case, and delivering the property.

819. The liquidator has, from the opening of the succession and for the time necessary for liquidation, the seizin of the heirs and particular legatees.

The liquidator may even claim the property against them.

820. The testator may modify the seizin of the liquidator, his rights, powers and obligations and provide in any other manner for the liquidation of his succession or the execution of his will. However, a stipulation that would in effect restrict the rights or powers of the liquidator in such a manner as to prevent an act necessary for liquidation is deemed null.

821. The property of the succession is used to pay the creditors of the deceased and of the succession and to pay the particular legatees, in preference to any creditor of the heir.

The heir's property is also used to pay the creditors, but only in case of pure and simple acceptance and of insufficiency of the property of the succession, and then, only after payment is made to the creditors of each heir whose claim came into existence before the opening of the succession.

The creditors of an heir whose claim came into existence after the opening of the succession are paid concurrently with the creditors of the succession who have not yet been paid.

822. The patrimonium of the deceased is separated *pleno jure* from that of the heir, as long as the succession has not been liquidated.

Separation of the patrimoniums operates both in respect of the creditors of the deceased and of the succession, and in respect of the creditors of the heir.

823. Separation of the patrimoniums also operates to the detriment of the creditors of the particular legatee where his legacy is reduced.

CHAPTER II

LIQUIDATOR OF THE SUCCESSION

SECTION I

DESIGNATION AND RESPONSIBILITIES OF THE LIQUIDATOR

824. Any person of full age capable of exercising his civil rights or any legal person authorized by law may be a liquidator.

825. The heir is entitled *pleno jure* to be the liquidator unless the testator has designated a liquidator and the latter has accepted the office.

Where several heirs are entitled to be liquidator, they may designate the liquidator by a majority vote.

826. No person is bound to accept the office of liquidator of a succession unless he is an heir.

827. A testator may designate one or several liquidators; he may also provide for their mode of replacement.

A person designated by a testator to execute his will or to administer his succession is also a liquidator.

828. Where several persons exercise together the functions of liquidator, they must act in concert, except as otherwise provided by the heirs, the testator or the court.

If one of the liquidators cannot act or is prevented from acting, the other liquidators may perform alone acts of a conservatory nature and acts requiring dispatch.

829. The court may, on the application of an interested person, designate a liquidator when the heirs are unable to agree on his designation or if for any reason the liquidator cannot be appointed or replaced.

830. The liquidator is entitled to the reimbursement of the expenses necessary for the liquidation.

The liquidator is entitled to remuneration if he is not an heir; if he is an heir, he may be remunerated if the will so provides or if the heirs so agree.

If the remuneration was not fixed by the testator, it is fixed by the heirs or, in case of disagreement among the interested persons, by the court.

831. The liquidator is not bound to furnish security or liability insurance unless the majority of the heirs demand it or the court orders it, on application by any interested person who establishes the need for such a measure.

832. If a liquidator required to furnish security or liability insurance fails or refuses to do so within the time prescribed by the heirs or the court, he ceases to be a liquidator.

833. Any interested person may apply for the replacement of a liquidator who is unable to assume his responsiblities, who neglects his duties or who does not fulfil his obligations.

834. During proceedings, the liquidator continues to hold office unless the court decides otherwise and designates an acting liquidator.

835. Any interested person may, if the liquidator is not designated or is to be replaced, apply to the court to have seals affixed, an inventory made, an acting liquidator appointed or any other order rendered which is necessary to preserve his rights. Those measures benefit all the interested persons but create no preference among them.

The costs of inventory and seals are chargeable to the succession.

SECTION II

FUNCTIONS OF THE LIQUIDATOR

836. The liquidator shall act in respect of the property of the succession as an administrator of the property of another, entrusted with simple administration.

837. The liquidator must search to ascertain whether the deceased made a will.

If the deceased made a will, the liquidator shall have it probated, register it and take all the necessary steps to execute it.

838. The liquidator shall administer the succession. He shall realize the property of the succession to the extent necessary to pay the debts, charges and particular legacies. He is not bound to pay any secured debt the payment of which is not exigible at the death and which is assumed by an heir or a particular legatee.

839. The liquidator must, under pain of revocation, make an inventory, unless he is exempted therefrom by the heirs or the testator.

840. Notice of closure of an inventory must be registered in the registry office of the place where the succession opened. The notice must indicate the place where interested persons may consult the inventory.

841. An inventory may be reviewed with the consent of the interested persons, or contested in court upon application by any one of them.

842. A liquidator who alienates a movable property shall proceed according to the Code of Civil Procedure unless the property

is perishable, or unless all the heirs who have accepted purely and simply consent to another form.

843. In no case may a liquidator alienate immovable property, except in case of need or obvious advantage, without the consent of all the heirs who have accepted purely and simply.

He shall proceed according to the Code of Civil Procedure, unless the same heirs consent to another form of alienation.

844. In no case may a liquidator alienate property bequeathed by particular title except where any other property of the succession is insufficient and except with the authorization of the particular legatee or, failing him, the court.

845. When there is a beneficiary heir, the liquidator must, if he disposes of property of the succession other than perishable property, make the beneficiary heirship known by prior public notice.

The notice must be published once in the *Gazette officielle du Québec* and once in a newspaper circulated in the locality where the succession opened. The notice must indicate the date of acceptance with benefit of inventory, the place, date and registration number of the acceptance and the name and address of the notary before whom it was made.

846. A liquidator who has an action to bring against the succession shall give notice thereof to the public curator. The latter shall act *ex officio* as liquidator *ad hoc*, unless the heirs or the court designate another person.

847. If the liquidation takes longer than one year, the liquidator must, at the end of the first year, and at least once a year thereafter, render an annual account of management to the heirs, the creditors and the particular legatees who have not been paid.

848. Where the succession is manifestly solvent, the liquidator, after satisfying himself that all the creditors and particular legatees may be paid, may advance sums of money to the heirs and legatees of sums of money. The sums advanced are deducted from the shares of those heirs and legatees.

CHAPTER III

PAYMENT OF DEBTS AND PARTICULAR LEGACIES

SECTION I

MODE OF PAYMENT

849. The creditors may sue for the recovery of their claims out of all the property of the succession as long as the succession has not been liquidated.

850. Payment of particular legacies is due only out of the net assets of the succession.

851. If the property of the succession is insufficient, the liquidator shall first pay the creditors, in their order of preference, and then the particular legatees.

If the liquidator is unable to satisfy all the creditors, he shall pay them *pro rata*.

852. A particular legatee is bound to the creditors only to the extent of the property he has received, and only if the other property is insufficient.

853. If the assets are insufficient to pay all the debts of the succession, the liquidator may alienate property bequeathed by particular title or reduce the particular legacies.

In those cases, the debt is apportioned among the particular legatees *pro rata* to their legacies. Those legatees may be discharged by returning the legacy or its value.

854. A particular legatee who has paid a debt or charge exceeding his share has an action against the other particular legatees *pro rata* to the value of each legacy.

855. Where the reserve provided for in a payment proposal proves to be insufficient, the creditor has an action against the heirs up to the amount they received after payment of the debts and, if necessary, against the particular legatees *pro rata* to the legacies received.

856. If the net assets of the succession are insufficient to pay all the particular legacies, those which have preference are paid first, and then all the legacies shall be reduced *pro rata*; the remainder is then partitioned among the other legatees *pro rata* to the value of each legacy.

857. A legacy to a creditor is not presumed to have been made as compensation for his claim.

SECTION II

TIME OF PAYMENT

858. In no case may the liquidator pay the debts of the succession and the particular legacies before the expiry of two months from registration of the inventory or from publication of the notice that the succession has been accepted with benefit of inventory.

Failing an inventory or a notice, the liquidator has no authority to pay before the expiry of three months from the acceptance of the succession unless all the heirs have accepted purely and simply.

859. If the liquidator is able to satisfy all the creditors and particular legatees, he shall pay the creditors who produce their claims, as and when they present themselves.

860. During any proceedings, the liquidator is not authorized to pay any debt or particular legacy before drawing up a statement of all the debts and particular legacies, and obtaining homologation by the court of a payment proposal providing for a reserve for payment of any future judgment.

861. Without prejudice to their action in damages against the liquidator, known creditors who have been neglected in the payment have a right of action against legatees paid to their detriment and, in case of insufficiency of the property, against the other creditors of the succession who have been paid, in proportion to their claims, taking account of causes of preference.

Particular legatees who have been neglected have, in the same conditions, a right of action against the other particular legatees.

862. Creditors and particular legatees who do not present themselves until after the payments have been regularly made have an action only against the remainder of the succession. However, they have no preference over the personal creditors of the heir.

Nevertheless, creditors have an action against any legatee who has been paid to their detriment, unless the legatee proves that they have not been paid owing to their lack of diligence, as the property was sufficient to pay all creditors.

SECTION III

LIABILITY FOR PAYMENT

863. The sole heir to a succession is liable for all the debts and charges.

Where a succession devolves to several heirs, each of them is liable for the debts and charges in proportion only to the share he receives as an heir, subject to the rules governing indivisible debts.

864. The heirs are liable, in the same manner as for all other debts and charges of the succession, for the compensatory allowance awarded to the surviving spouse for his contribution, in goods or services, to the enrichment of the patrimonium of the deceased.

In fixing the allowance, particular account must be taken of the advantages given to the surviving spouse by the matrimonial regime and the marriage contract. The allowance is payable immediately or by instalments.

The allowance may be paid, in whole or in part, by the awarding of a right of ownership, use or habitation, in accordance with articles 458 to 462.

865. The testator may change the manner and proportion in which the law holds his heirs liable for payment of the debts and charges; nervertheless, the creditors may take personal or hypothecary action against the heirs, who have an action against those upon whom the testator imposed the obligation.

866. A pure and simple heir may be compelled to pay his share of the debts and charges out of his own property.

However, if a pure and simple heir discovers new facts, or if a creditor appears of whom he could not have been aware at the time of his acceptance, he may limit his liability to the value of the property he has received, provided those events have the effect of substantially changing the extent of his obligation.

The court may make any order to that effect and determine the limit of the heir's personal liability; in particular, it may give the heir a full discharge, provided he abandons all that he has received from the succession.

867. A beneficiary heir cannot be compelled to pay out of his private property, except to the extent of the residual property in his hands.

If the beneficiary heir is a liquidator and fails to render his final account after being given formal notice to do so, he may also be compelled to pay out of his personal property.

868. In addition to the personal action which may be exercised against them, the heirs remain hypothecarily liable for any property affected with a hypothec and included in their share, without prejudice to their recourse against the heirs personally liable for their share, according to the rules applicable to warranty.

869. Unless otherwise stipulated in the deed of partition, an heir who has paid part of the debts and charges in excess of his share has an action against his coheirs for the reimbursement of the excess.

His action does not lie against the other coheirs, however, not even by virtue of subrogation in the rights of the creditor who was paid, except with regard to that part of the debt that each of them ought to have paid himself.

Nevertheless, a beneficiary heir retains the right to demand payment of his claim, like any other creditor, after his share is deducted.

870. If one of the coheirs becomes insolvent, his share of the hypothecary or other debt is divided among all the others *pro rata* to their respective shares, unless the debt is assumed by a coheir.

871. The legatee by general title of a usufruct is personally liable towards the creditor for the debts and charges of the succession, even for the principal, in proportion to what he receives; he is also hypothecarily liable for affected property included in his share, like any other legatee by general title and subject to the same recourses.

The contribution to the debts is determined between him and the bare owner according to the rules laid down in the Book on Property.

872. A legatee by general title of the whole usufruct is liable for full payment of any annuities or support established by the testator, and for payment of the interest on all hereditary debts.

873. A usufruct established on a thing bequeathed is borne without recourse by the legatee of the bare ownership.

The same holds true for servitudes which are borne by the legatee of the thing affected.

874. Particular legacies are paid by the heirs, each in the proportion for which he is liable, as in the contribution to the debts

If the legacy is imposed on one particular heir, the personal action of the particular legatee does not lie against the others.

The testator may, whatever the form of the will, ensure the right to a legacy by a hypothec on any sufficiently identified property of the succession.

875. When a particular legacy includes a universality of assets and liabilities, such as a succession or a business concern, or when the bequeathed property is affected with a hypothec, the legatee is personally and solely liable for the debts connected with it, subject to the rights of the creditors against the heirs, who, in turn, have an action against the particular legatee.

CHAPTER IV

END OF LIQUIDATION

876. Liquidation ends when the known creditors and the particular legatees have been paid.

It also ends when the assets are exhausted.

877. The object of the final account of the liquidator is to determine the net assets or the deficit of the succession.

It establishes, where applicable, the reserves necessary to discharge future judgments or to pay a secured debt assumed by an heir.

In addition, the liquidator must append to the final account a proposal for partition, if a partition is necessary.

878. The liquidator, at any time and with the consent of all the heirs, may render an amicable account without judicial formalities.

The cost of the account is borne by the succession.

If an amicable account cannot be rendered, the account is rendered in court.

879. After acceptance of the final account, the liquidator is discharged of his administration.

TITLE SIX

PARTITION OF SUCCESSIONS

CHAPTER I

RIGHT TO PARTITION AND TO UNDIVIDED OWNERSHIP

880. In no case may partition take place or be applied for before the liquidation is terminated.

However, the testator may, for reasonable cause, order partition deferred for a limited time. He may also order partition deferred if the rights, powers and obligations of the liquidator must continue to be held under another title to fully carry out his intentions, particularly to accomplish an object or ensure a subsequent delivery of property.

881. If all the heirs are in agreement, partition is made in accordance with the proposal appended to the final account of the liquidator; otherwise, partition is made as they see fit.

882. In the event of disagreement among the heirs, no partition may take place except under the conditions laid down in Chapter III and in the forms required by the Code of Civil Procedure.

883. Notwithstanding an application for partition, undivided ownership may be maintained of a family business that had been operated by the deceased, or of the shares or securities related to the business if the deceased was the principal partner or shareholder.

884. Undivided ownership may also be maintained of any immovable used as the principal family residence or of movable property used as household furniture, even where a right of ownership, use or habitation is awarded to the surviving spouse.

885. Any heir who before the death took an active part in operating the family business or lived in the family residence may make the application to the court to maintain undivided ownership, as may also the tutor to the minor child of the deceased.

886. When deciding an application for the maintenance of undivided ownership, the court shall take into account the testamentary dispositions, as well as the existing interests and the means of livelihood which the family and the heirs draw from the undivided property; whatever the state of the case, the agreements among the partners or shareholders to which the deceased was a party must be respected.

887. On an application by an heir, the court may stay immediate partition of the whole or part of the property and maintain the undivided ownership of it, in order to avoid a loss.

888. Maintenance of undivided ownership may not be ordered for a duration of more than five years unless all the interested persons agree to another term.

It may be renewed until the death of the spouse or until the majority of the youngest child, if the deceased leaves a minor child.

889. The court may order partition where the causes that justified the maintenance of undivided ownership have ceased or undivided ownership has become intolerable or dangerous for the heirs.

890. If an application for the maintenance of undivided ownership contemplates a particular property or a group of properties, the liquidator is free to partition the residue of the property of the succession. However, the heirs may always satisfy the heir who objects to the maintenance of undivided ownership by paying his share themselves or authorizing the liquidator to give him, after appraisal, certain other property of the succession.

891. A person entitled to enjoyment of only a share of the undivided property has no right to participate in a partition, except a provisional partition.

892. A person who is not an heir, to whom an heir has transferred his right to the succession may be excluded from the partition by a coheir by repaying the price of the transfer.

893. An heir who has abstracted or concealed property of the succession, particularly an heir who has neglected in bad faith to include it in the inventory, has no claim to any share in that property.

The share accrues to the benefit of the other heirs.

CHAPTER II

CONDITIONS OF PARTITION

SECTION I

COMPOSITION OF SHARES

894. Partition may include all, or part only, of the undivided property.

Partition of an immoveable is deemed to have been carried out even if parts remain which are common and indivisible or which are intended to remain undivided.

895. Shares must be made up in the same number as the heirs, or as the coparcenary roots, if the shares are equal.

If the shares are unequal, they must be made up in sufficient number to allow a drawing of lots.

896. In the making up of the shares, there must be taken into account the testamentary dispositions, the right of preference of the surviving spouse, the objections, the applications for allotment by preference, reserve funds for settling contingent judgments, and the evident intention of certain heirs to pay certain debts and the convenience of this method of allotment.

897. In the making up of the shares, immovables should not be broken up, nor should enterprises be divided.

Sor far as the breaking up of immovables and the division of enterprises can be avoided, each share must, as far as possible, be made up wholly or partly of movable or immovable property, rights or claims of equivalent value.

Any inequality in the value of the shares is compensated for by a balance.

898. The rules laid down for the composition of the shares are also observed in the composition of shares among the coparcenary roots.

899. The interested persons may agree on the allotment of the shares; if they fail to agree, they shall draw lots for the shares.

Before the drawing, each coparcener may raise objections as to the make-up of the shares.

900. Where the liquidator proposes a partition, he must, before composing the shares, hear the heirs and take account of the testamentary dispositions and the rights of each in respect of certain property.

901. Undivided owners making an amicable partition shall make up the shares as they see fit and decide by agreement among themselves on their allotment, or on drawing lots for them.

If they consider it necessary to sell the property or some of the property to be partitioned among them, they shall also agree among themselves on the conditions of sale.

SECTION II

PREFERENTIAL ALLOTMENTS AND CONTESTATION

902. Each heir receives his share of the property of the succession in kind, and may demand that he be allotted a particular item or a share by way of preference.

903. Subject to the rights of the surviving spouse, if several heirs request to be allotted, by preference, the immovable used as a residence by the deceased, the person who was living in it has preference over the others.

904. Notwithstanding any objection or application for an allotment by preference by another coparcener, the business or the capital shares or securities connected with the business are allotted by preference to an heir who took an active part in operating the business at the time of the death.

905. If several heirs have the same right of preference and there is contestation over an application for an allotment, the contestation is settled by a drawing of lots.

906. Where the contestation among coparceners is over the determination or payment of a balance, the court shall determine it and may, if necessary, determine the appropriate modalities of guarantee and payment in the circumstances.

907. The property is appraised according to its condition and its value at the time of partition.

908. If certain property cannot be conveniently apportioned or allotted, the interested persons may decide to sell it.

909. If the interested persons cannot agree, the court may, where necessary, designate an appraiser to evaluate the property, order the sale of the property that cannot conveniently be partitioned or allotted and determine the modalities of sale; or, it may order a stay of partition for the time it indicates.

910. In order that the partition not be made in fraud of their rights, the creditors of the succession, and those of an heir, may be present at the partition and intervene at their own expense.

SECTION III

DELIVERY OF TITLES

911. After partition, the titles common to the entire inheritance are delivered to the person the heirs have chosen to act as depositary; he must assist his coparceners at their request. If they cannot agree on the choice, it is made by a drawing of lots.

912. At partition, however, any heir may apply for and obtain a copy of the titles to property in which he retains rights. The costs so incurred are shared.

CHAPTER III

RETURNS

SECTION I

RETURN OF GIFTS AND LEGACIES

913. For the purposes of partition, each coheir must return to the mass only what he has received from the deceased, by gift or by will, under an express obligation to return.

A person entitled to inherit who renounces a succession is not obliged to return.

914. In addition to what he must return, the representative must return what the person represented would have had to return, even if he renounces the inheritance of the represented person.

915. Return is made only to the succession of the donor or of the testator.

It is due only from one coheir to another and it is not due to the particular legatees nor to the creditors of the succession.

916. Return is made by taking less.

Any stipulation requiring the heir or the legatee to make return in kind has no effect. However, they may make the return in kind if they still own the property unless they have affected it with a usufruct, a servitude, a hypothec or any other real charge.

917. Coheirs to whom return by taking less is due shall deduct from the mass of the succession property equal in value to the amount of the return.

As far as possible, pretakings are made in property of the same kind and quality as that which must be returned.

If pretaking cannot be made in this manner, the heir returning may either pay the cash value of the property received or allow his coheirs to deduct other equivalent property from the mass.

918. Return by taking less may also be made by charging to the heir the cash value of the property received.

919. In the absence of a contrary disposition in the gift or will, property returned by taking less is evaluated at the time of partition if it is still in the hands of the heir, or on the date of the alienation if the property was alienated before partition.

Bequeathed property, and that which remains in the succession, is appraised according to its condition and value at the time of partition.

920. The value of property returned by taking less or by taking in kind must be reduced by the appreciation of the property resulting from the expenditures or personal initiative of the person returning.

It is also reduced by the amount of the expenditures necessary for preserving the property, even if they have not appreciated the value.

Conversely, the value is increased by the depreciation resulting from the actions of the person returning.

921. The heir is entitled to retain the property returned in kind until he has been reimbursed the amounts he is owed for upkeep or improvements.

922. An heir is not bound to return property which has been destroyed by a fortuitous event and without fault on his part. He must, however, return any compensation he has received for the loss of the property.

923. Copartitioners may agree that property affected by a hypothec or a charge is to be returned in kind; the return is then made without prejudice to the holder of the right; the obligation resulting therefrom is charged against the person returning in the partition of the succession.

924. The fruits of the property given or bequeathed, if the property is returned in kind, or the interest on the amount returnable, are also returnable from the time when the succession is opened.

SECTION II

RETURN OF DEBTS

925. Except in the case of a remission taking effect at the opening of the succession, an heir coming to a partition must return to the mass all the debts he owes to the deceased together with all the debts he owes to his coparceners by reason of the undivided ownership resulting from the death.

Those debts are subject to return even if they are not due when partition takes place.

926. If the amount in capital and interest of the debt to be returned exceeds the value of the hereditary share of the heir bound to return, the heir remains indebted for the remainder and must pay it according to the conditions attached to the debt.

927. If an heir bound to return has himself a claim to make, even though it is not exigible at the time of partition, he receives compensation and must return only the balance of his debt.

Compensation also operates if the claim exceeds the debt and the heir remains creditor of the excess.

928. Return is made by taking less.

The deduction effected by coheirs or the charging of the amount to the heir may be set up against the personal creditors of the heir bound to return.

929. Return must be made of the value of the debt in capital and interest at the time of partition.

The returnable debt bears interest from the death if it precedes the death and from the date when it was contracted if it was contracted after the death.

CHAPTER IV

EFFECTS OF PARTITION

SECTION I

THE DECLARATORY EFFECT OF PARTITION

930. Partition is declaratory of ownership. Each coparcener is deemed to have inherited, alone and directly, all the property included in his share or which devolves to him through licitation or through any other kind of partial or complete partition.

He is deemed to have owned the property from the death, and never to have owned the other property of the succession.

931. Any act the object of which is to terminate undivided ownership between coparceners constitutes partition, even though the act is referred to as a sale, an exchange, a settlement or any other act.

932. Subject to the provisions respecting the administration of the property of another and the juridical relationships between an heir and his assigns, and subject to the consent of the other copartitioners in the case of return in kind, acts performed by an undivided heir, or charges instituted by him respecting property which has not been allotted to him, cannot be set up against any other undivided heirs who have not consented to them.

933. Acts validly made during undivided ownership resulting from the death, and those to which all the heirs have given their consent, retain their effect, regardless of who, at partition, receives the property to which they apply.

Each heir is then deemed to have performed the acts concerning the property which devolves to him.

934. The declaratory effect also applies to hereditary claims against third persons, to any assignment of the claims during the undivided ownership by one of the coheirs, and to any seizure of the claims by the creditors of one of the coheirs.

The provisions of this Code regarding notification of sales of debts apply to those resulting from partition.

SECTION II

WARRANTY OF COPARCENERS

935. Coparceners are warrantors towards each other only for the disturbances and evictions arising from a cause prior to the partition.

Nevertheless, each coparcener remains a warrantor for any eviction caused by his personal act.

936. Insolvency of a debtor prior to partition gives rise to warranty in the same manner as an eviction.

937. The warranty does not occur if the eviction in question has been excepted by a stipulation in the deed of partition; it terminates if the coparcener suffers eviction through his own fault.

938. Each coparcener is personally bound, in proportion to his share, to indemnify his coparcener for the loss which the eviction has caused him.

The loss is appraised at the value it has as on the day of the partition.

If one of the coparcener is insolvent, the share for which he is liable must be divided proportionately among the warrantee and all the solvent coparceners.

939. No action in warranty may be instituted within three years following eviction or discovery of the disturbance.

However, no action in warranty by reason of insolvency of a debtor of the succession may be instituted over three years after partition.

CHAPTER V

NULLITY OF PARTITION

940. Partition, even partial, may be annulled for the same reasons as a contract.

941. Mere omission of undivided property does not give rise to an action in nullity, but only to a supplement to the deed of partition.

942. Where the defect in a partition is not considered sufficient to entail nullity, there may be supplementary or corrective partition.

943. In deciding whether an act was unconscionable, the value of the property must be considered as it was at the time of partition.

944. The defendant in an action in nullity of partition may, in all cases, have the action terminated and prevent a new partition, by offering and delivering to the plaintiff the supplement of his share of the succession, either in money or in kind."

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

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