CIVIL CODE REVISION OFFICE

report on THE QUÉBEC CIVIL CODE

Volume I
DRAFT
CIVIL CODE

1977

THE QUÉBEC CIVIL CODE

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FOREWORD

To the many who have followed the work of the Civil Code Revision Office, the Draft Civil Code will come as something neither entirely new nor completely familiar.

Its broad outlines have become apparent with the publication, commencing in 1966, of the reports of the various Committees entrusted with the revision of each of the subject-matters covered by the Code.

However, the unavoidable division of the task inevitably resulted in all too great a distortion of a work requiring cohesion and unity. But now the pieces have been brought together, the unorganized has been put in order and the scattered has been assembled.

I - The aims

When the legislature decided in 1955 to proceed with the revision of the Civil Code, it confined itself to a brief statement of the general terms of reference within which the jurist appointed was to work. In so doing, it did not lay down the lines along which the revision was to be carried out and the direction the work was to take and, consequently, it did not indicate its scope. Was it a question of simply making quick and partial improvements where changes were most urgently needed? The contrary view was taken, in the belief that all the basic institutions of our civil law should undergo a collective and systematic rethinking.

What the revision should consist of, and what we strove for, cannot be more aptly expressed than it was by Professor André Tunc when he wrote (1): "*Il ne s'agit pas de tout bouleverser, mais de tout revoir; de se demander loyalement devant ces phénomènes nouveaux et aussi devant les transformations techniques et psychologiques de la société, ce qui, dans l'Ancien, garde sa force et, parfois, sa vertu, et ce qui gêne*

described by Professor René David during the celebration of the centenary of the Civil Code, consists essentially of a "style": it is a particular mode of conception, expression and application of the law, and transcends legislative policies that change with the times in the various periods of the history of a people.

Did Québec's Civil law become any the less civilian in 1866 when it accepted the principle of the consensual transfer of property, or in 1915 when it radically altered the spouse's rights of succession, or in 1969 when it adopted the partnership of acquests as the matrimonial regime of the general law? Will it become any less civilian by the acceptance of the substitution of parental authority for paternal authority, the introduction of legal tutorship by parents over the property of their children of minor age, the reintroduction of a successoral reserve for the benefit of the surviving consort, or of a regime of lesion among persons of major age based on both a discrepancy in the prestations and the exploitation of one party by the other, the creation of a general regime of hypothecs on moveable property, or of a regime which, contrary to the rule of accession, would enable someone to be completely at home on someone else's property? Loyalty to the civilian tradition demands a constant renewal of our institutions, and the adaptation of legal techniques to society's changing needs.

The determination to keep the civilian system vigorous made it necessary to recreate the organic unity of the Civil Law by the reintegration into the Code of a variety of specific laws which, so long as they remained outside it, were evidence of its slow withering away. The same motivating force also led to the retention of everything in the existing law that was not in need of change; there are more than a few provisions which reproduce existing law either word for word or in a somewhat modernized form in the interests of exactitude or clarity.

In looking through the Draft Civil Code, one will recognize a good many familiar landmarks, some of them refurbished, just as one will also discover certain marked changes in the landscape. Since there will be found in the introductions to the various Books of the Draft detailed descriptions of the principal changes contained in each of them, only the more striking features will be set forth here.

II - The principal features of the reform

1. Preeminence of the human person

It has often been said that the Civil Code was designed for landowners and those in a position to live off their investments, that it is more concerned with the protection of property than with respect for human rights. It was for this reason that there existed a desire that the recognition of the role of the human person, along with affirmation and protection of human dignity, be one of the main features of the Draft.

It is not by accident that the first article of the Draft reads as follows:

"Every human being possesses juridical personality".

This proceeds, as was ardently wished by our colleague Louis Baudouin (5), from a determination to put the human person, with its rights and duties, in its rightful place as the cornerstone of Private Law relationships.

A growing consciousness of the rights of children also led to the recommendation that the distinction, firmly drawn even today, between legitimate and illegitimate children, be abolished. The traditional rules, stemming from a philosophy which considered the transmission of an inheritance more important than the development of the child, had to go.

l'élaboration de règles et de techniques nouvelles qui pourraient mieux servir l'homme contemporain.''

The new Civil Code had to reflect the social, moral and economic realities of today's Québec; it had to be a body of law that was alive and contemporary, and which would be responsive to the concerns, attentive to the needs and in harmony with the requirements of a changing society in search of a new equilibrium.

In spite of the affinity indicated by the legislature in 1955 between the present revision and the 1866 codification, the task to be accomplished seemed to bear little resemblance to that entrusted to Caron, Morin and Day JJ. over a century ago. The latter were instructed essentially not to reform, but to reformulate the law in such a manner as to transform it from an ''archaic'' legal system into a ''modern'' legal system, following the example of France and of so many other countries of Europe and America which had already adopted their own codes. The security of a single and ordered legislative enactment was to replace the uncertainty created by a multiplicity of sources that were widely dispersed.

However, the legislature specifically ordered that it was the law that was in force at that time that was to be codified, and that it was to be done along the same lines and according to the same plan as the French Civil Code. The entirety of the basic institutions of our private law as it then existed was to be regrouped into a coherent and organic whole, expressed in clear and simple terms.

The aim of the codification was thus put into a context in which the determination to preserve the then existing law overrode any desire for change (2). As no need was felt to question traditional values, real innovations were few and far between.

The purpose was to construct a Code which, embodying

the past, would serve as a defence against outside influences which threatened the integrity of the Civil Law; it would guarantee the survival of a legal system that was distinctive but exposed due to its isolation within a continent in which the Common Law held sway. Regarded, like the French Civil Code, as the embodiment of Justice and Reason, it seemed inconceivable that its principles could be shaken by the vicissitudes of life. It was believed that the Civil Code would escape the effects of the passage of time.

Nevertheless, far from remaining sheltered from the drastic changes of the past century, this country has experienced all the social upheavals brought about by the industrial revolution, two world wars, major scientific and technological discoveries, urbanization, the advent of a consumer society and the age of obsolescence - phenomena which have profoundly changed the way of life of a century ago and altered traditional outlooks and even the institutions of the private law, whether it be the family, ownership, contracts, or civil responsibility.

In this connection, instead of putting the law into a strait-jacket, the Code should have been the means of updating legislative policy. However, both on account of its image and the role assigned to it in Québec society, the Code had ceased to be a symbol of permanence, and has instead become one of rigidity, the reflection of a static, even stagnant, conception of a certain social order. The result was an ever-widening gulf between law and life.

There should not be underestimated, however, the importance of various legislative innovations in the area of the Civil Law, the number of which has naturally tended to accelerate in recent decades. Under the pressure of the requirements of a society undergoing change, it was necessary to attempt to find solutions to the most urgent problems arising from modern life where the Code's solutions were

either non-existent or out-of-date. But to appreciate these efforts at legislation, it must also be borne in mind that the measures adopted were often conceived in haste, and, still more often, drafted in a language, a style and a spirit all too foreign to the civilian tradition of conciseness and clarity. Thus, on the fringes of the Code, and sometimes in contradiction with it, a body of civil law legislation was developing which had no coherent plan, and was not in harmony with the spirit of the Code.

There is no doubt that judicial interpretation also made an important contribution to the process of evolution. It was by dint of patient work mixed at times with a certain boldness that courts, in approaching their task of applying the rules of the Civil Code, rendered justice in full measure. In 1804, Portalis said: "*Un Code, quelque complet qu'il puisse paraître, n'est pas plutôt achevé, que mille questions inattendues viennent s'offrir au magistrat. Car les lois, une fois rédigées, demeurent telles qu'elles ont été écrites. Les hommes, au contraire, ne se reposent jamais.*" (3)

But while the primary function of the courts is not to ensure a systematic and coordinated evolution of the rules of law, one can only deplore the infiltration, both unjustified and unnecessary, of Common Law concepts the application of which were sanctioned by the authority of certain judicial decisions. This has resulted in a confusion in the mind, and inconsistency in the positive law.

The result is that, at this point in time, our Civil Law offers a number of facets which are not in harmony with each other. First of all, the Civil Code has remained largely unchanged in its basic philosophies: it still bears the stamp of authoritarianism in family law, individualism in property law and liberalism in matters of conventional obligations - doctrines which prevailed when it was drafted, but which everyone so well knows are outmoded by today's reality and

by the prevailing trends of contemporary thought. Secondly, there is that body of so-called "statutory" legislation which discloses the existence of a will to adapt to changing circumstances, but which is too often set forth in an alien form and in language that is barbaric. Finally, there is the jurisprudence that sought to render justice and equity, but which has been torn between the attractions of opposite poles.

It can be readily appreciated from the foregoing that an extensive reform was necessary to restore to the Civil Code its primary function: that of governing relations between citizens in accordance with the norms, concepts and techniques of our time. In short, the Civil Code had to be made to reflect the society of Québec in the latter part of the twentieth century.

Thus the task of revision could not be approached in the same spirit as that which guided the first codification. In comparison with what was done a little more than a century ago, it seemed to us that the situation called for a complete reversal in the objectives to be achieved. The obsolescence of the Civil Code required that priority be given to reforming the institutions of the Civil Law, and that there be undertaken, in the light of experience and of comparative law, a systematic examination of the entire Code, with a view to removing the traces of a vanished past and to bringing the law into harmony with contemporary reality.

To be sure, this rethinking of the fundamental principles of the Code led to changes being proposed in the traditional rules of the Civil Law that are at times profound. Despite this, we believe that we have not broken with our civilian heritage (4). For, in accordance with the felicitous formulation of our colleague Professor André Morel: "Innovation is not synonymous with treason, nor does faithfulness rule out change". The Civil Law is not simply a collection of rules drawn from Roman, ecclesiastical or customary law, and handed down to us in a solidified form. The Civil Law, as it was so aptly

While the right of the child to affection and security is emphasized, paternal authority, which was justified by a patriarchal view of the family, would be replaced by parental authority. This would put both parents on an equal footing in making decisions as to the child's education and upbringing. For the protection of the child against abuse, provision has been made for the withdrawal of parental powers or even the deprivation of parental authority. The same philosophy made the best interests of the child the determining factor in any decision concerning him, particularly in matters of adoption, tutorship, the separation or divorce of his parents, and the granting or withholding of medical services.

Tutorship was also the object of a thorough re-organization aimed, amongst other things, at entrusting parents with the administration of the property devolving to their children. This administration, subjected to a periodic verification, is intended to ensure both flexibility and efficiency in the representation of a minor and in the management of his property.

The adoption of the principle of equality between consorts had many ramifications in various aspects of family law. It is suggested that the married woman keep her maiden name; that the establishment of the conjugal domicile be the result of the joint decision of the consorts; that consorts share parental authority and marital responsibilities; in short, that they make all important family decisions together. Equality between consorts had led to the proposal in 1968 that the partnership of acquests be adopted as the common regime of property rights; it also leads today to the modernization of the community of property regime, as well as to shared responsibility for the damage caused by a child of minor age.

The desire to protect members of the family unit lies behind a variety of measures such as raising the age at which marriage may be contracted to eighteen, the protection of the

family residence, and the restrictions imposed on the freedom of willing by the creation of a legal reserve in favour of the surviving spouse, the acknowledgment that support continues to be owed even after the death of the debtor, and by the preferential attribution of certain property in the succession.

Furthermore, no modern judicial system can fail to take cognizance of the situation of unmarried persons who have chosen to live together on an open continuing basis. Because of this, and out of respect for individual freedom, rules to govern these *de facto* unions were deemed necessary to ensure at least the protection of the consorts, their children and property, without, however, there being imposed on the parties involved any constraints or obligations which they were precisely seeking to avoid.

In the revision of the classic rules governing contracts, it was once again the desire to protect the dignity of the person, this time in his role as a consumer of goods and services, that was the motivating force. Well-founded criticisms of the myth that contracting parties are free and equal have once again made meaningful the famous warning by Lacordaire who, in the middle of the last century, was already opposing triumphant liberalism in these words: "*Entre le fort et le faible, c'est la liberté qui opprime; c'est la loi qui affranchit.*"

Surely, the principle of freedom in legal relationships would remain, but its application must be tempered when, in a given social or economic situation, it leads to abuses that society cannot tolerate. Consequently, a degree of formalism in contracts or the inclusion therein of a mandatory content were deemed necessary in some instances in order to re-establish a contractual balance, or at least to make the party who is in the weaker position aware of the consequences of the undertaking he is entering into. This applies, for example, to contracts of sale, residential leases and insurance policies.

It is also proposed that the courts be allowed increased

powers of intervention in contractual matters so that injustices can be rectified when certain clauses appear excessive or abusive, or when, as a result of circumstances beyond the control of either party, the execution of the obligations of the agreement would entail undue hardship for one of them. This is why it has been recommended that an old civilian tradition be revived by the reintroduction of the concept of lesion between parties of major age which had been rejected by the Code in 1866, but which has reappeared from time to time in various Québec laws. Similarly, the Draft allows for the revision of contracts on the basis of *imprévision* and denies the creditor the right to resolution or resiliation when the inexecution is of minor importance. In the same vein, it prohibits clauses excluding responsibility in cases of injury to the person.

And in an age where there is, with good reason, growing consciousness of fundamental human rights, it seemed opportune to insert a reminder in a Civil Code that rights correspond to duties; that the affirmation of the rights of one carries with it respect for the rights of others. This is why the Draft provides rules enunciating the fundamental duties of persons, no longer under the cover of a "fault", but expressed in terms of positive standards of behaviour to be observed by citizens in their relationships with each other.

2. Modernizing the law

The modernization of Québec's Civil Law to bring it into harmony with the economic and social realities of our time is another determining factor that led to a number of proposed reforms. Consider in particular the expansion of the concept of trusts; the introduction of rules on the right of superficies and, in particular, with respect to construction leases; the introduction into the Code of hypothecs on moveable property regrouping all types of real security on moveable property by the integration of traditional forms of real security with other contractual devices having the same

objective (such as conditional sales, sales with a right of redemption). Consider also the diversification in the hypothecary recourses, and the abolition of all privileges.

Lease and hire of work, whose name was as out-of-date as the rules governing it, has been replaced by the three types of contract actually in use: the contract of employment, the contract for services, and the contract of enterprise. A contract of arbitration with respect to both present and future disputes, whose validity is fully recognized, takes its rightful place in the Draft.

The law on evidence also underwent certain changes, the objects of the principal ones being the codification of customary rules and an increased emphasis on testimony. One proposed rule which deserves to be mentioned and whose necessity is more and more obvious would allow the courts to refuse *proprio motu* illegally obtained evidence.

The process of modernization led to a simplifying of the law of prescription and a centralization of the system governing acts of civil status. Here, as in the field of registration of real rights, the reform presupposes the establishment of data processing equipment like that which exists in a number of neighbouring jurisdictions, without which the application of an up-to-date and effective legal system would be severely hampered.

Finally, the desire to codify, and occasionally to clarify, jurisprudential solutions, and to make the Civil Law conform to international texts as applied in a number of countries, inspired many innovations which are found more particularly in the chapter on the contract of transport, and in the Book on Private International Law which would be the final Book in the new Civil Code.

III - The method

It is easy to see that no one person could achieve alone the objectives aimed at. We have already said that this reform was conceived as a collective effort in reflection. It therefore seemed essential to provide for different stages of participation and consultation to enable professionals and laymen to express their opinions on the various aspects of the reform.

The first stage of consultation consisted of setting up study committees responsible for submitting drafts or reforms in particular areas of the Civil Law.

The committee was the key to the reform. Consisting generally of three to seven jurists - judges, lawyers, civil servants and professors - it was able to count on the constant collaboration of research assistants; it was able to commission special studies, and to consult experts - jurists and others, and to interview individuals or organizations that might be affected by a particular reform; and finally, it prepared a report comprising a draft reform accompanied by explanatory notes both French and English.

The second stage of consultation involved outside participation. Its main purpose was to submit the committee reports to the free and unrestricted appraisal of interested persons and organizations. Thus, each of the forty-seven reports of the committees of the Office was printed in about 2,000 copies which were distributed to government departments, courts, universities, professional organizations, unions, women's associations, political groups, religious bodies, social agencies, banking institutions, and news agencies, and also to an increasing number of individuals who on all sides showed an interest in the reform of the Code, and finally, to foreign civil and comparative law experts. Each was invited to submit observations and criticisms in writing by a certain date.

Where the subject-matter was appropriate or the nature

of the observations warranted it, public study or information sessions were held to enable members of a committee to understand more fully the ideas of the authors of briefs, and even to enable authors of briefs to discuss among themselves the various legislative options in question. This method sometimes produced excellent results because it made it possible to realize that opposing interests are not always irreconcilable, that agreement could often be reached, or that a diversity of opinions did not always result from ill will, but most often from legitimately opposed interests. When these consultations were completed, the committee resumed study of its report in the light of the observations, comments and criticisms, and prepared the final reports which it submitted to the Office (6).

The third stage of consultation consisted in coordinating the work of the study committees. Obviously, where every Committee, as it had the right to do, freely presented its legislative options, there could result - and this was a good thing - conflicts in legislative policy or terminology. In effect, it would be surprising if, in these days, a hundred and fifty jurists, representing the various sectors of the profession, belonging to different generations and coming from every corner of Québec, each having his own political, social, religious or moral views, were to arrive at unanimity. Thus steps had to be taken to ensure the coordination of the work. A Coordinating Committee was set up, to which difficult cases of conflict in legislative policy were referred. A Reading Committee was established with responsibility for style and consistency in the vocabulary. Where necessary, final arbitration was brought to bear by the President of the Office.

Thus was conceived and written the Draft Civil Code which the National Assembly of Québec will be called upon to examine and, if it approves, to adopt (7).

It must be remembered, however, that the promulgation

of a new Civil Code cannot be considered a final goal in itself, but only a fresh beginning. The success of the reform will, of course, depend upon the doctrinal and judicial interpretation given it; it will also depend on the setting up of a Family Court dispensing justice in a manner that recognizes the special characteristics of family disputes, and the establishment of administrative support machinery particularly with respect to civil status and the registration of real rights, so as to ensure, with speed and efficiency, while respecting individual freedoms, the necessary publicity that must be given to acts and deeds relating to persons and to property; but, above all, there most certainly will be no real success unless there is awareness that reform is only one stage in the juridical life of a people and that the evolution of practice and mores must be followed with a view to the continual adaptation of the Civil Code to the new and ever changing needs of Québec society.

The Draft is the product of a collective effort over a period of more than twelve years. Many craftsmen have shaped the final work, each adding his valuable contribution in the various phases of the creation of the whole, whether it be in the writing of committee reports, the appraisal of proposed solutions, the coordination of the work or the preparation of the Final Report. We are deeply grateful to all (8).

Particularly invaluable were the contributions of the members of the Coordinating Committee, the Reading Committee led by Professor André Morel, the team of translators presided over by Mr. Clive Meredith of the Translation Service of the Department of Communications of Québec, the research associates of the Office who have so largely contributed in ensuring the scientific quality of the Report and who, in the final stage of the work, have assumed, under the responsibility of Me Renée DesRosiers de Lanauze, the delicate task of preparing the tables of concordance and the schedules of the Report, and the staff of the Secretariat

directed by Mrs. Alice Archambault-Robaczewska, whose devotion and patience were severely tested.

Finally, we would like to mention those who are no longer with us: Mtre André Lesage, notary, Professor Louis Baudouin, Dean Maximilien Caron, Mtre Marcel Faribault, notary, Mr. Justice Claude Gagnon, Mtre Bruce Cleven and, quite recently, the General Secretary Rapporteur of the Office, Mtre Yves Caron, a colleague and friend. Throughout these years, Mtre Caron was a tireless worker. He was no ordinary partner. His vitality and capacity for work resulted in a contribution to the work of the revision of the Civil Code that can only be described as outstanding.

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at McGill University.

15 August 1977

(1) Preface to the work by Miss G. VINEY, *Le déclin de la responsabilité individuelle*, Paris, L.G.D.J., 1965, p. ii.

(2) See, on this subject, J.E.C. BRIERLEY, *Quebec's Civil Law Codification*, (1968) 14 McGill L.J. 521.

(3) *Projet de Code civil*, Paris, Lepetit jeune, An IX, Discours préliminaire, P. XII.

(4) See, in this respect, F.-H. LAWSON, *A Common lawyer looks at the Civil Law*, Ann Arbor, 1953.

(5) See LOUIS M. BAUDOUIN, *Les aspects généraux du droit privé dans la Province de Québec*, Paris, Dalloz, 1957, p. 147 et s.

(6) If the proposed reform was urgent in nature, it was submitted to the Minister of Justice with the recommendation that it be incorporated in a separate bill without waiting for the overall reform. In this way, work and reports carried out by the Office inspired certain legislation regarding, in particular, civil marriage, adoption, declaratory judgments of death, the matrimonial regimes, the Public Curatorship, obligations between parents and natural children, the Charter of human rights and freedoms, the lease of things and insurance.

(7) It must be remembered, however, that certain parts of the Draft cannot be implemented as such by the National Assembly because of the fact that the subject-matters do or might fall within the legislative authority of Parliament (see S. 91 par. 26 of the British North America Act; also S. 92, par. 12 and 13). Such is the case in the area of Family law both in respect of internal rules and of conflict rules. But in view of the necessity, on the one hand, to present a homogeneous and coherent Family law Draft, and, on the other hand, of the impossibility of delineating the respective boundaries of Federal and Provincial jurisdictions, the Draft was prepared, with the consent of the provincial authorities, without taking the constitutional question into account. Indeed, we believed that the problems of the family are first and foremost human problems and that we should not let such an astonishing and artificial distribution of legislative powers - where the search for political compromise loomed larger than the requirements of legal coherence - prevent the formulation of a comprehensive reform of family law. It will be for the competent authorities to solve this problem, either by agreeing to a new distribution of legislative powers or by each of the two authorities enacting the Draft within the uncertain limits of its jurisdiction.

(8) A list of those who contributed to the revision of the Civil Code will be found in Schedule VI.

BOOK ONE

PERSONS

TITLE ONE

JURIDICAL PERSONALITY

CHAPTER I

ENJOYMENT OF CIVIL RIGHTS

1 Every human being possesses juridical personality.

2 Juridical personality is granted to legal persons created in accordance with the law.

3 Juridical personality confers full enjoyment of civil rights, subject to express provision of law.

4 Every person has a patrimony which consists of all his property and all his debts.

He also possesses the extra-patrimonial rights and duties peculiar to his status.

5 No person may renounce the enjoyment of his civil rights and of his fundamental liberties.

CHAPTER II

EXERCISE OF CIVIL RIGHTS

6 Every person of major age has full exercise of his civil rights, subject to express provision of law.

7 Similarly, every legal person has full exercise of its civil rights, except with respect to anything peculiar to a human person.

The provisions of law regarding the exercise of civil

rights by human persons apply to legal persons, insofar as possible.

8 Every person must exercise his rights and perform his duties in accordance with the requirements of good faith.

9 No person may exercise a right with the intent of injuring another, or in any way that may cause damage out of proportion to the benefit he may derive.

10 No person may violate public order and good morals by any juridical act.

11 No person may renounce the exercise of his civil rights and his fundamental liberties in a manner contrary to public order and good morals.

CHAPTER III

RESPECT OF PRIVACY

12 Every person has the right to privacy.

13 No person may invade the privacy of another without his consent or unless he is expressly authorized by law.

In particular, no person may:

1. enter property lawfully occupied by another or take anything from that property;
2. voluntarily intercept or use any private communication;
3. voluntarily monitor or use the image or voice of any person in a private place;
4. observe a person's private life by any means;
5. use a person's name, image, likeness or voice for any

purpose other than the supplying of legitimate information for public opinion;

6. use any correspondence, manuscript or other personal document belonging to another;

7. divulge confidential information concerning the private life of another, contained in a file administered by the State or by another person.

14 Every person has a right of access to any file concerning him which the law requires be kept.

When the information contained in that file is false, incomplete or not pertinent to the purpose of those who hold it, the person concerned may have the information removed or corrected, without prejudice to his other rights.

TITLE TWO

HUMAN PERSONS

CHAPTER I

GENERAL PROVISIONS

15 The human person is inviolable.

No one may harm the person of another without his consent or unless he is authorized by law to do so.

16 A person of major age may consent to alienate part of his body *inter vivos,* or to submit to a non-therapeutic experiment, provided the risk assumed is not disproportionate to the benefit anticipated.

A minor may do the same with the authorization of his father and mother or, failing them, of the person who exercises parental authority and of a judge, provided no serious risk to his health results from this.

The alienation must be gratuitous, unless the part of the body alienated is capable of regeneration.

The consent must be given in writing; it may be revoked in the same way or, if the revocation is made in the presence of the person who was to carry out the removal or the experiment, by a verbal statement.

17 No person may submit a child or a person of major age, incapable of discernment, to any non-therapeutic experiment which may endanger his health.

18 A person of major age may decide in writing as to the nature of his funeral and the disposal of his remains. In the same way, he may gratuitously dispose of his remains or

authorize the removal of organs and tissues after his death, for medical or scientific purposes.

A minor may do the same with the authorization of his father or mother or, failing them, of the person who exercises parental authority.

The consent must be given in writing; it may be revoked in writing or verbally before a witness.

19 A physician may remove part of the body of a deceased person if, failing prior instructions from the deceased, he obtains the consent of the consort or nearest relative of that person.

This consent is not required when two physicians attest in writing to the impossibility of obtaining it in due time, the urgency of the operation and the serious hope of saving a human life.

The death of the donor must have been ascertained by two physicians who in no way participate in the removal or in the transplantation.

20 An autopsy may be performed only in cases provided for by law or where the deceased had consented in writing.

A minor may also consent in writing to an autopsy, with the authorization of his father or mother or, failing them, of the person who exercises parental authority.

21 An autopsy may be required by the attending physician, by the consort or the heirs of the deceased, his relatives in the first degree or those persons acting in their stead.

22 An autopsy may also be required by an insurer if the circumstances surrounding the insured's death justify it.

23 An application for an autopsy is made by summary motion to a judge of the Superior Court.

It is served on the persons designated by the judge and in the manner prescribed by him, unless he dispenses with all service.

CHAPTER II

PROVISIONS RELATING TO CHILDREN

24 Every child is entitled to the affection and security which his parents or those who act in their stead are able to give him, in order to ensure the full development of his personality.

25 In every decision concerning a child, whether that decision is made by his parents, by the persons acting in their stead, by those entrusted with his custody or by judicial authority, the child's interest must be the determining factor.

Consideration is given in particular to the child's age, sex, religion, language, character and family surroundings, and the other circumstances in which he lives.

26 In every judicial decision affecting the interest of a child, the court must consult that child if he is capable of discernment, unless circumstances do not permit this.

27 The court must appoint an attorney to represent a child in any proceedings where that child's interest so requires.

Any interested person, including the members of the court's auxiliary services, may apply for the appointment of an attorney.

28 A child conceived is deemed born provided he is born alive and viable.

29 A child is deemed to have been conceived within three hundred days before his birth.

30 "Children" used alone means descendants in the first degree.

"Grandchildren" means descendants in the second degree.

"Descendants" used alone means all the posterity of a person, regardless of degree.

31 Any reference to family relationship or to relationship by filiation in the law or in any act includes relationship by blood, whatever the circumstances of the birth, or by adoption.

CHAPTER III

NAME AND PHYSICAL IDENTITY

Section I

Attribution of name

32 Every human person has a name consisting of one surname and at least two given names attributed to that person in his act of birth.

33 A child bears his father's surname.

However, if maternal filiation only has been established, he bears his mother's surname.

34 A child whose paternal filiation and maternal filiation are not established bears the name attributed to him by the Registrar of Civil Status.

35 If a disavowal or a contestation of paternity has been judicially allowed, a child loses his presumed father's surname.

From the time of the judgment, he bears his mother's surname.

36 A child who is recognized by his father under the conditions mentioned in Article 273 of the Book on *The Family* may bear his father's surname.

He may apply by motion to have the registers of civil status corrected.

37 If the child is recognized by his mother only, he may bear her surname.

He may also apply by motion for correction of the registers of civil status.

38 The motion mentioned in Articles 36 and 37 is submitted to the court by the father, the mother, the legal representative of the child if the child is a minor, or the child himself if he is fourteen years old.

A child who has come of age must submit the application, on pain of forfeiture, within two years after he reaches the age of majority.

39 Except in cases of adoption, the change in a surname resulting from a change in civil status does not entail any change in the given names.

40 A child's given names are chosen by his parents.

Where they cannot agree, each parent gives him one name.

41 An adopted person bears the surname of the person who

adopts him; when adoption is by consorts, he takes the surname of the husband unless, on motion by the person adopting or by the adopted person or his tutor, the court decides that the original surname should be retained or the name of the person adopting should be added.

42 Any change in the surname of an adopted person entails the same change for any minor child of his who bears the same name.

If that minor child is fourteen years old, however, he may object to the change.

43 On motion by the person adopting or by the adopted person, the court may change the given names of the child.

44 A copy of the judgment changing the surname of a person in accordance with Articles 38, 41, 42 and 43 is forwarded to the Registrar of Civil Status by the prothonotary or the clerk of the court which rendered it.

45 Consorts retain their respective surnames and given names throughout their marriage.

Section II

Change of name

46 A change of name other than one made under Section I may be authorized only by the Registrar of Civil Status, in accordance with the rules of this section.

47 A change of name may be authorized:

1. when the name is too difficult to pronounce or to use, particularly by reason of its foreign sound;

2. when the name could subject the petitioner to ridicule or when it has become infamous;

3. when the name generally used by the petitioner does not correspond to that entered in his act of birth;

4. for any other reason deemed sufficient by the Registrar of Civil Status or, in the event of appeal, by the judge.

48 Only a Canadian citizen who has resided in Québec for one year may apply for a change of name.

49 A minor fourteen years old may apply alone for a change of name.

50 A change in the name of the petitioner entails the same change for any minor child of his who bears the same name.

However, if that child is fourteen years old, he may object to the change.

Section III

Change of physical identity

51 Any unmarried Canadian citizen who has resided in Québec for one year and has successfully undergone medical and surgical treatment to transform his sexual features may have his act of birth altered by the Registrar of Civil Status.

52 A change of physical identity allows only the modification, in the act of birth, of the entries relating to the sex of the

petitioner and to his given names; the entries must be in keeping with his new physical identity.

53 A change of surname is authorized only in exceptional circumstances assessed by the Registrar of Civil Status.

Section IV

Effects of change of name or of physical identity

54 A change of name or of physical identity does not affect the rights and obligations of a person.

55 Acts, titles and other documents made by a person who has changed his name or his physical identity, or made in his favour under his former name or his former physical identity, are deemed made under his new name or under his new physical identity.

56 The person who has changed his name or his physical identity may require that such acts, titles and other documents be drawn up again, or corrected, at his expense, under his new name or under his new identity.

Section V

Use and protection of name

57 The name of every person is entitled to respect.

58 No person may usurp or use any name other than his own if confusion or damage can result.

59 The holder of the name, his spouse and his relatives in the direct line may demand that the usurpation cease, and may claim reparation of the damage caused.

CHAPTER IV

DOMICILE

60 The domicile of a person is at the place of his habitual residence.

61 A person changes his domicile by establishing his habitual residence in another place.

62 Any person whose habitual residence cannot be determined with certainty is presumed to be domiciled at the place of his last known domicile.

If no previous domicile can be established, the person is presumed to be domiciled at the place of his birth and, if that place is unknown, in the judicial district of Québec.

63 A minor is domiciled with his parents or with his tutor.

A minor whose custody has been the subject of a judicial decision is domiciled with the person who has custody of him.

When no judicial decision has been rendered with respect to custody, and the minor's parents have no common domicile, the minor is domiciled with the person with whom he habitually resides.

64 A person of major age placed under tutorship is domiciled with his tutor.

65 Parties to an agreement may elect domicile under that agreement with a view to its execution or to the exercise of the actions arising from it.

Election of domicile must be express and in writing.

CHAPTER V

ACTS OF CIVIL STATUS

Section I

General provisions

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

They contain only what is required by law.

67 The contents of acts of civil status may be disclosed only in the manner and in the cases provided by law.

68 The Registrar of Civil Status is the sole officer of civil status.

He receives attestations and declarations of birth, marriage and death.

He immediately signs and dates the declarations he receives and enters them in the register of civil status.

69 The declaration so signed, dated and entered constitutes an act of civil status.

If the declaration is made after the prescribed period, the Registrar may make an investigation or apply for a judgment before preparing the act.

70 The declaration of civil status indicates the surname, given names, quality, and domicile of the declarant who signs it.

71 If there is no declaration or if a declaration is incomplete or contrary to the attestation, the Registrar may draw up the act on the basis of any information he obtains.

72 The prothonotary or the clerk of the court which has pronounced a judgment to rectify an act of civil status, a declaratory judgment of death or of absence, a judgment to reconstitute or replace an act of civil status, or a judgment admitting a contestation or disavowal of paternity, an admission of paternity or maternity, an adoption, a divorce or an annulment of marriage, sends a copy of the judgment to the Registrar as soon as it is final.

The Registrar immediately enters it in the register and, if need be, attaches it to the act affected.

He also enters any decision regarding a change of name or of physical identity.

73 An adoption outside Québec by a person domiciled in Québec must be declared.

The person adopting sends the Registrar the act of adoption or a duly certified copy; if it is impossible to obtain such a document, he sends any other document establishing the adoption.

The Registrar enters it in the register and draws up an act of birth.

74 After assuring himself as to the authenticity of the copy of any act of civil status drawn up outside Québec but concerning a person domiciled in Québec at that time, or of any decision rendered outside Québec but likely to change an act of civil status drawn up in Québec, the Registrar enters it in the register as though it was an act drawn up in Québec and, if need be, attaches it to the act concerned.

75 The acts mentioned in Articles 73 and 74 which are not

drawn up in French or in English must be accompanied by a translation into either of these languages, certified in Québec or at the place of origin.

76 Upon entry of a decision granting a change of name or of physical identity, a judgment to correct an act of civil status, a judgment granting adoption or acknowledging paternity or maternity, or a judgment admitting a contestation or disavowal of paternity, the Registrar prepares a new act, signs it and enters it in the register.

This new act does not include the information in the original act which required modification.

77 Upon entry of a declaratory judgment of death or of a judgment to reconstitute or replace an act of civil status, the Registrar prepares the act, signs it and enters it in the register.

In addition to the information required by law, the act indicates the date of the judgment, the court which rendered it and the number of the court file.

A copy of the judgment is attached to the act.

These details are included in any certificates issued subsequently.

78 The Registrar issues certificates of civil status and copies of acts of civil status.

79 Any person who applies for a certificate may obtain one.

80 Every certificate indicates the registration number of the act; it is dated and signed by the Registrar.

It contains only the additional information required by law in each case.

81 The certificate may make no reference to any information which has changed the act or is attached to it.

82 Only a person mentioned in an act of civil status, or who justifies his interest in it, may obtain a copy of that act.

Except in the cases provided for by law, he may obtain a copy of the original act which also includes any changes made to it or any entries attached to it.

The copy bears the date of its issue and is signed by the Registrar.

Section II

Acts of birth

83 The physician or, if there is no physician, the person who attends the mother, prepares an attestation of delivery and immediately transmits a copy of it to the Registrar and to the persons obliged to declare the birth.

84 An attestation of delivery mentions the date and place of the birth, the sex of the child, and the surname, given names and domicile of the mother and of the physician or the person who attended her.

It is signed by the person who prepares it.

85 The father or the mother or, failing them, the person who has custody of the child, must declare the birth of that child to the Registrar within eight days.

The declarant attaches a copy of the attestation of delivery to his declaration.

86 Any person who finds a newborn child must make a declaration to that effect within the same period.

The presumed date of birth is fixed by the Registrar on the basis of a medical report.

87 A declaration of birth mentions the surname, given names and sex of the child, the place and date of his birth, the surnames, given names and domiciles of the parents, and the degree of relationship between the declarant and the child.

88 A certificate of birth mentions the surname, given names and sex of the child, and the date and place of his birth.

89 Copies of acts of birth and of certificates of birth issued after death or after a declaratory judgment of absence mention that death or that judgment.

Section III

Acts of marriage

90 The officiant transmits the declaration of a marriage to the Registrar of Civil Status within eight days.

91 The declaration of marriage mentions the surname, given names and domicile of each consort, their respective places and dates of birth, the place and date of the marriage, the surname, given names and capacity of the officiant, the surname, given names and domicile of the parents of each consort, and the surname, given names and domicile of each witness.

If one of the consorts has obtained a dispensation by reason of age, this fact is mentioned in the declaration which also indicates the date of the judgment and the number of the court file.

The declaration is signed by the consorts, the witnesses and the officiant.

The officiant gives a copy to the consorts.

92 A certificate of marriage mentions the surname and given names of each consort, and the date and place of the marriage.

93 Copies of the act of marriage and of certificates of marriage issued following annulment of a marriage, or divorce, or death, or a declaratory judgment of absence must mention the annulment, divorce, death or judgment.

Section IV

Acts of death

§ - 1 Attestations and declarations of death

94 A physician who establishes that a death has occurred prepares an attestation of death.

He transmits the attestation to the Registrar without delay and makes one copy available to the persons who must declare the death.

If no physician is available, the attestation may be made by a coroner, a mayor, a minister of religion or, if none of these is available, by two persons of major age.

95 An attestation of death mentions the date and place of the death, the surname, given names and sex of the deceased, and the surname and given names of the person who prepares the attestation.

It is signed by that person.

96 If the deceased cannot be identified, the attestation of death gives a description of him and an account of the circumstances surrounding his death.

97 The spouse of the deceased, a person related to him or, failing these, any other person capable of identifying him,

must declare the death to the Registrar within eight days of that death, or of the declaratory judgment of death or of absence, as the case may be.

A copy of the attestation is attached to the declaration.

98 A declaration of death gives the surname and given names of the deceased and of his parents, his sex, the place and date of his birth, the place of his last domicile, the place and date of his death and, where applicable, the surname and given names of the surviving spouse.

It also indicates the relationship between the declarant and the deceased.

99 If the date of death is not known, the Registrar fixes the presumed date on the basis of a medical report.

If the place of death is not known, the death is presumed to have occurred where the body was found.

100 The Registrar mentions the death or absence, as the case may be, in a schedule to the deceased's acts of birth and of marriage.

101 A certificate of death gives the surname, given names and sex of the deceased and the date and place of his death.

If a certificate is issued following a declaratory judgment of death, it also includes the information required under Article 77.

§ - 2 **Declaratory judgments of death**

102 The death of a person who has died in Québec or was domiciled there must be judicially declared when it is impossible to draw up an attestation of death and his death can be held to be certain.

103 The judgment mentions the surname, given names and sex of the deceased, the place of his last domicile, and the place of his death, if it is known.

It fixes the date of death, taking into account the presumptions drawn from the circumstances or, failing such circumstances, it fixes as the date of death the day when the deceased disappeared.

104 A declaratory judgment of death terminates the marriage of a person declared to have died, and dissolves his matrimonial regime.

105 If a person whose death has been judicially declared reappears, the court, on motion, orders revocation of the declaratory judgment and cancellation of the entries to which the revoked judgment gave rise.

106 A person who reappears takes back his property in the condition in which it is, what remains of the price of any of his property which has been alienated, or any property acquired with the price.

107 Any payment made subsequent to a death which has been judicially declared, but before the return of the person declared deceased, is valid and constitutes valid discharge.

Section V

Correction and rectification of acts of civil status

108 The Registrar corrects clerical errors in any act.

In other cases, rectification is obtained, upon motion, in the manner prescribed in the Code of Civil Procedure.

Section VI

Judgments to reconstitute and replace acts of civil status

109 An act which has been lost or destroyed, or a copy of which cannot be obtained, may be reconstituted following a judgment, even if the act was received or drawn up outside Québec.

110 If no act exists respecting a birth, marriage or death, the act may be judicially supplied, even if the birth, marriage or death occurs outside Québec.

CHAPTER VI

MAJORITY AND MINORITY

Section I

Majority

111 The age of majority is eighteen years.

Majority is also attained by marriage before that age.

112 Upon reaching majority, every person is fully capable of performing all acts of civil life, subject to express provision of law.

Section II

Minority

113 A minor is capable of contracting, subject to express provision of law.

114 An act performed alone by a minor may be annulled, or

the obligations which derive from it may be reduced, on his application, if he suffers damage.

A minor who has become of major age may confirm the act, subject to Article 37 of the Book on *Obligations*.

115 A mere verbal declaration by a minor to the effect that he is of major age does not deprive him of his recourse in nullity or reduction.

116 The minor may not exercise any recourse in nullity or reduction when the damage results from a casual or an unforeseen event.

117 A minor is responsible for all damage which results from an offence or a quasi-offence committed by him.

118 A minor is deemed of major age for the purposes of his business, his craft, his profession or his employment.

119 A minor authorized to marry is deemed of major age for the purposes of his marriage contract.

The same applies to a minor who will be of major age on his wedding day.

120 A minor is represented, in any judicial proceedings, by the person who exercises parental authority, subject to express provision of law.

However, with the authorization of the judge, a minor may institute alone an action relating to his status.

A minor may himself invoke, in his defense, any irregularity resulting from lack of representation.

121 A minor fourteen years old may consent alone to receive any treatment required by his state of health.

Where such a minor is sheltered for more than twelve hours, or where treatment is prolonged, the physician or the hospital centre must inform the person who exercises parental authority.

122 When a minor is under fourteen years of age, his father, mother or tutor must consent to the care required.

However, if the consent cannot be obtained, or if refusal is not justified in the interest of the child, a judge may authorize the care or treatment.

123 A minor under sixteen years of age may be given the medical or surgical care which his condition requires, even though he refuses it, provided the person who exercises parental authority gives his consent.

124 When the life of a minor is in danger, no consent is necessary for any medical or surgical care.

CHAPTER VII

PROTECTED PERSONS

Section I

General provisions

125 Tutorship is intended to ensure protection of the person and of the patrimony, or of the patrimony only.

126 Tutorship to minors is legal, dative or testamentary.

127 Tutorship to protected persons of major age and to absentees is dative.

The same applies to curatorship to persons of major age.

128 There are two kinds of legal tutorship: that exercised by parents over the property of their minor children, and that provided for by law for specific purposes.

129 Tutorship to the person is a personal office; every person, whether citizen or alien, may act as a tutor, subject to express provision of law.

130 Tutorship is not transferred to the heirs of the tutor.

The heirs are responsible only for the tutor's administration and, if they are of major age, they must continue the administration until a new tutor is appointed.

131 Legal tutorship by parents is a gratuitous office.

132 A dative or a testamentary tutor may receive remuneration fixed by the court or by the testator, taking into account the expenses of the tutorship.

133 The following persons may not act as tutors:

1. a minor, unless he is the father or mother of the child;
2. a person of major age under tutorship or under curatorship;
3. a person who is, or whose spouse is, engaged in a dispute involving the status, patrimony, or a significant portion of the property of the protected person;
4. a person confined to a penal institution.

134 No person may be compelled to act as a dative or a testamentary tutor.

135 A married person may not act as a dative or a testamentary tutor to the person of a minor, unless he obtains the consent of his spouse, provided, however, these consorts are living together.

136 Tutorship is based at the domicile of the minor or of the person of major age under tutorship.

137 The court or the testator may appoint either one person, or consorts living together, as tutor or tutors to the person.

138 A tutor to the person is also tutor to the property.

However, the judge or the testator may appoint one tutor to the person, and one or more tutors to the property.

139 Tutorship to the property may be referred by the court, or entrusted by the testator, to an organization specializing in administration of the property of others.

140 A tutor may delegate the administration of the protected person's property in accordance with the Title on *Administration of the Property of Others.*

He may also delegate it to an organization specializing in administration of the property of others.

141 The tutor to the person has the care of the protected person.

He represents him in the exercise of all his civil rights, and in all judicial proceedings, subject to express provision of law.

142 When several tutors are appointed to the property of a protected person, they perform their respective duties independently of each other with regard to the property entrusted to them.

143 The tutor to the property makes an annual report on his administration to the tutor to the person.

144 The tutor deducts from the property he administers all amounts necessary for the n
for the expenses of the tutorsh

If he does not do so, any interested person may apply to the court to determine the amount to be deducted.

145 The tutor to the person agrees with the tutor to the property as to the annual amount he needs to perform his duties, and also as to payment of that amount.

If they cannot agree, the court determines the amount necessary, and the conditions of payment.

146 With respect to the property of a protected person, the tutor to the property has the powers and obligations of an administrator entrusted with full administration.

147 All property which has been given, bequeathed or judicially assigned to a protected person, on express condition that it be administered by a third party, is exempt from tutorship.

148 The Public Curator supervises the administration of property given, bequeathed or judicially assigned to a protected person and exempted from administration by the tutor.

149 The protected person retains the administration of the proceeds of his own work.

150 Whenever the protected person's interests are in conflict with those of his tutor, the court, on motion by any interested person, may appoint an *ad hoc* tutor to the protected person.

The Public Curator may be appointed *ad hoc* tutor.

151 In addition to the causes for extinction provided for in the Title on *Administration of the Property of Others*, the functions of dative and testamentary tutors terminate when:

1. the protected person dies;
2. the minor becomes of major age;
3. the protected person is adopted;

4. the tutor is replaced or dismissed.

152 In addition to the causes provided for in sub-paragraphs 1, 2 and 3 of the preceding article, legal tutorship of the parents terminates upon:

1. deprivation of parental authority;

2. judicial withdrawal of tutorship;

3. commencement of dative tutorship.

153 A tutor may apply to be relieved of his duties at any time, provided his application is not made at a time detrimental to the interests of the protected person.

He remains in office until a new tutor is appointed.

154 A tutor who becomes unable to perform his duties may be replaced.

155 Any interested person, including the Public Curator, may apply to the court for replacement of a dative or a testamentary tutor.

The application is made in accordance with the Code of Civil Procedure.

156 A dative or testamentary tutor who neglects his duties toward a protected person, or mistreats him, may be dismissed.

157 Unless otherwise ordered by the court, a dative or testamentary tutor retains his authority over the protected person and over the property of that person throughout the proceedings for dismissal or replacement.

158 Unless the court decides otherwise, the father or the mother retains power over the child's property during proceedings for withdrawal of legal tutorship to the property.

159 In the cases mentioned in Articles 157 and 158, the court, from the time of application, may appoint the Public Curator to act as tutor.

160 The judgment ordering dismissal or replacement of a tutor orders him to render an account and appoints a new tutor.

If no person is proposed for the office of tutor, or if the person proposed does not accept the office, the court appoints the Public Curator.

The court rules on the custody of the person, should the occasion arise.

161 The judgment has no effect with regard to third parties until it has been filed in the central register of protected persons.

162 The Title on *Administration of the Property of Others* applies to this chapter when it is not incompatible.

Section II

Parents' legal tutorship to the property of their minor children

163 Parents, even those of minor age, are of right legal tutors to their minor children's property.

164 Parents administer their minor children's property together, unless either of them has been awarded custody of them by the court, in which case that parent alone fulfils the duties of tutor to the property, until the court decides otherwise.

165 If either parent dies, or is unable to express his wishes or cannot express them within the time required, the other parent exercises legal tutorship.

166 Either parent may confer on the other a mandate to represent him in the exercise of legal tutorship.

With regard to third parties in good faith, this mandate is presumed.

167 In the absence of a decision to the contrary, once the court has restored to a parent his parental authority or any attributes of that authority which have been withdrawn, that parent recovers legal tutorship, even if dative tutorship has already begun.

Section III

Dative tutorship

168 Dative tutorship to minors is conferred by the court, in accordance with the Code of Civil Procedure, when:

1. both parents have died without appointing a testamentary tutor, or they cannot exercise parental authority;
2. the parents have been deprived of parental authority;
3. the parents have seen their legal tutorship to the child's property withdrawn.

169 Any interested person, including the Public Curator, may apply by motion for commencement of dative tutorship; he may submit the name of any person, or the names of consorts living together, who are suited to act as tutor or tutors and who agree to do so.

170 A dative tutor assumes office on the day he is appointed.

Section IV

Testamentary tutorship

171 Tutorship is testamentary when the tutor is appointed in a will by the surviving parent who was exercising parental authority on the day of his death.

172 When a testator entrusts several persons, other than consorts living together, with tutorship to the person, the tutorship is without effect.

The court which appoints a dative tutor, however, takes the wishes of the testator into account.

173 A testator may provide in his will for the replacement of the tutor he appoints.

174 An heir, legatee or executor may be appointed tutor to the person and to the property.

175 The testamentary tutor assumes office when he becomes aware of his appointment.

If he has not refused the tutorship within two months after he becomes aware of his appointment, he is presumed to have accepted it.

176 If a testamentary tutor refuses to accept the tutorship, he must do so by a notarial deed *en minute* or by a judicial declaration, recorded by the court.

A copy of the deed of refusal must be sent without delay by the notary or the prothonotary, as the case may be, for filing in the central register of protected persons.

177 A testamentary tutor who agrees so to act must, within thirty days after the holograph will or the will before witnesses is probated, or within thirty days following the death if the

will is in authentic form, send the Public Curator a copy of the will appointing him, for filing in the central register of protected persons.

178 When a testamentary tutor refuses the tutorship and the testator has appointed a substitute, the person who received the refusal must so advise the substitute.

If the substitute does not refuse the tutorship within thirty days, he is presumed to have accepted it on the day he became aware of his appointment.

179 If the testamentary tutor or his substitute has refused the tutorship within the prescribed period, a dative tutor may be appointed to the minor.

Section V

Protection of persons of major age

§ - 1 Tutorship and curatorship to persons of major age

180 A person of major age whose mental faculties are impaired or who is physically incapable of expressing his will may be placed under tutorship or under curatorship.

181 A person of major age is placed under tutorship when, for any reason mentioned in the preceding article, he is incapable of acting for himself and requires representation in the exercise of his civil rights.

182 A person of major age is placed under curatorship when, for any reason mentioned in Article 180, he is incapable of acting without help and requires assistance in the exercise of his civil rights.

183 When the court orders a person placed under curatorship, it may authorize him to perform alone certain acts which it determines.

184 The court, on motion by any interested person, including the Public Curator, decides on the commencement of a regime of protection.

185 The judgment ordering commencement of a regime of protection stipulates the regime under which the protected person is placed, and appoints a tutor or a curator.

186 The court, any time before judgment, may upon motion appoint a person to administer provisionally the property of the person to be protected.

187 The provisional administrator is entrusted with the simple administration of the property of the person to be protected.

188 A judgment placing a person of major age under protection may be revised by the court, on motion by any interested person including the Public Curator in the event of recovery, improvement or deterioration of the protected person's physical or mental health, in compliance with the formalities for commencement of the regime.

189 A person of major age under tutorship is incapable of contracting, subject to express provision of law.

190 An act performed alone by a person of major age under tutorship may be declared null or the obligations which derive from it may be reduced, on his application, without it being necessary to prove damage.

191 All acts performed before a person of major age is placed under tutorship are subject to the same nullity as those performed after he is so placed, provided the grounds for placing him under protection notoriously existed when the acts were performed.

192 A person of major age under curatorship is capable of contracting, subject to express provision of law.

193 An act performed alone by a person of major age under curatorship may be declared null or the obligations which derive from it may be reduced, on his application, as in the case of a minor, if he suffers damage.

194 Subject to Article 37 of the Book on *Obligations*, he may confirm the contract after the curatorship has terminated.

195 A person of major age under curatorship may institute alone proceedings concerning his status, with the authorization of the judge.

196 A curator assumes office on the day he is appointed.

He is appointed, and may be replaced or dismissed, under the same conditions as a tutor.

§ - 2 **Tutorship to sick persons**

197 When a sick person who has no tutor is unable to act for himself for a reason given in Article 180, and requires representation in the exercise of his civil rights, the director of professional services of the hospital centre where he is treated must immediately advise the Public Curator.

198 The sick person's condition is attested to by a certificate from the director of professional services, following a reasoned recommendation in writing from the psychiatrist or specialist, as the case may be, who examined the sick person.

The director sends the certificate, and any other document or information indicated by government regulation, to the Public Curator.

199 As soon as the Public Curator receives the certificate, he must ask the court, by motion, to appoint him tutor to the sick person.

200 The Public Curator has the powers and obligations of a

tutor with regard to the person and property of the sick person, subject to express provision of law.

If a tutor to the person only is appointed, the Public Curator continues to act as tutor to the property.

201 The sick person retains full administration of the proceeds of the work done by him during the tutorship.

202 The Public Curator does not have custody of the sick person.

The director of professional services of the centre where the sick person is hospitalized has custody of that person.

203 The powers of the Public Curator as tutor to a sick person cease of right:

1. when a judgment appointing another tutor or a curator to the sick person is served on the Public Curator;
2. when the court renders a judgment declaring that the sick person is no longer incapable.

204 The Public Curator continues his administration after the sick person dies, until the succession is accepted.

§ - 3 **Tutorship to absentees**

205 An absentee, in this Code, is a person domiciled in Québec who has disappeared without anyone knowing whether he is still living.

206 A tutor may be appointed to an absentee who has rights to be exercised or property to be administered, if he has no attorney or if his attorney is unknown or is unable to act.

The court may appoint the Public Curator.

207 The tutor represents the absentee.

He has, with respect to the property of the absentee, the powers and obligations of a tutor to a minor.

208 Tutorship to an absentee terminates:

1. when he returns;
2. when he confers a power of attorney on any person;
3. by declaratory judgment of absence;
4. upon proof of his death.

209 When an absentee has been absent for seven consecutive years, any interested person, including the Public Curator, may obtain a declaratory judgment of absence.

210 An absentee is presumed dead from the time of the declaratory judgment of absence.

The judgment terminates the marriage of the absentee, dissolves his matrimonial regime and gives his heirs possession.

211 After the declaratory judgment of absence is rendered, any person who has claims against an absentee exercises them against his heirs.

The heirs are bound only to the extent of their emolument.

212 If the date of an absentee's death is proven after a declaratory judgment of absence is rendered, the succession opens on that date.

The persons who have possession of the absentee's property must restore to the heirs qualified to inherit at that time the property in the condition in which it is, what remains of the price of any property which has been alienated, or any property acquired with the price.

213 If the absentee is proven to have died on a date prior to that of the declaratory judgment of absence, his matrimonial regime is dissolved on the date of his death.

214 When an absentee returns, the court, on motion, orders revocation of the declaratory judgment of absence and the cancellation of any entries to which the revoked judgment gave rise.

215 The heirs of the absentee, or the absentee himself if he returns, recover the property in the condition in which it is, what remains of the price of any property which has been alienated, or any property acquired with the price.

216 Any payment made as a result of a declaratory judgment of absence is valid and constitutes valid discharge.

217 If an heir who has been given possession learns that the absentee is alive, he retains his rights over the property and acquires the fruits as long as the absentee does not reappear or no action has been taken on his behalf.

218 Any person who claims a right accruing to an absentee must prove that the absentee was living when the right accrued.

219 If a succession to which an absentee is called opens, it devolves exclusively to those with whom he would have been entitled to inherit, or to those who would have inherited in his stead.

220 Articles 218 and 219 apply without prejudice to any action for the recovery of an inheritance or any other right, which belong to the absentee or to his heirs and legal representatives and which are extinguished only by the lapse of time required for prescription.

Section VI

Measures of supervision applying to tutorship

221 The clerk of the court or the prothonotary immediately sends the Public Curator a copy of any judgment respecting the pecuniary interests of a person under tutorship.

222 Any person who intends to enter into a settlement with a person under tutorship or with that person's tutor must immediately so advise the Public Curator.

The Public Curator may intervene in the settlement to ensure that the pecuniary interests of the person under tutorship are respected.

223 No payment may be made, nor property delivered, to a person under tutorship or to his tutor, except the proceeds of his work and customary presents, without prior authorization from the Public Curator.

224 When tutorship to the property begins, the tutor makes an inventory of the property subject to the tutorship and furnishes a surety or another security considered acceptable by the Public Curator.

225 A tutor must also provide such a surety or another security before he is given possession of any property payable to a person under tutorship.

226 If the security is not provided within the period of time determined by the Public Curator, he may require that the property be handed over to him, and he administers it until the conditions provided for in the preceding article are met.

227 No security is required when the total value of the property administered by the tutor is less than three thousand dollars or when the property payable to the person under

tutorship consists of the proceeds of his work or constitutes a customary present.

228 The tutor, executor or trustee, as the case may be, makes an inventory of the property which devolves to a person under tutorship by gift, succession or will, in accordance with Articles 913 and following of the Code of Civil Procedure, account being taken of Article 343 of the Book on *Succession*.

The inventory must be made within six months following the death or within thirty days following the gift, as the case may be.

A copy of the inventory must be sent to the Public Curator.

229 The obligation to make inventory is imperative.

230 The tutor submits annual financial statements to the Public Curator, subject to any exemption granted by the Public Curator, in accordance with the law.

A minor who has reached the age of sixteen may demand a copy of the statements from his tutor.

231 The financial statement is prepared by a chartered accountant, in the cases provided by law.

The cost of the audit is borne by the person under tutorship.

232 The tutor who alienates property worth five thousand dollars or more must first obtain an assessment certificate, unless that property consists of shares of stock quoted and negotiated on the stock market.

The tutor must file the certificate when submitting the annual financial statements.

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

233 The Public Curator may audit the tutor's books.

234 The Public Curator may require any document and any explanation respecting the financial statements sent to him by a tutor.

235 The tutor must always submit a copy of the final statement to the Public Curator.

236 The Public Curator may apply for the dismissal of a tutor who does not execute his obligations.

237 The final statement may be contested in the manner provided in the Code of Civil Procedure.

238 A tutor who infringes this section, except Articles 225 and 226, is liable to a fine of not less than fifty dollars nor more than one thousand dollars.

If the offence is repeated, he is liable to a fine of not less than five hundred dollars nor more than five thousand dollars, or to imprisonment for six months, or to both.

239 Every person who is required to obtain authorization from the Public Curator before remitting property which belongs to a person under tutorship and who fails to obtain such authorization, is liable to a fine of not less than fifty dollars nor more than five thousand dollars.

240 Every person who enters into a settlement with a person under tutorship and has failed to so advise the Public Curator is liable to a fine of not less than fifty dollars nor more than five thousand dollars.

TITLE THREE

LEGAL PERSONS

CHAPTER I

GENERAL PROVISIONS

241 Legal personality is conferred according to the conditions provided by law.

242 The deed constituting a legal person must be registered according to law.

If the deed is not registered, the legal person cannot sue and its personality cannot be set up against third parties.

243 A legal person has a name which is given to it at its creation.

This name may be changed according to the procedure established by law or, failing that, by the statutes of the legal person.

244 The legal person exercises its rights and executes its obligations under that name.

Subject to the preceding paragraph, a legal person may in particular operate an enterprise under a name other than its own name.

245 The domicile of a legal person is at its head office or, if it has no head office, at the place of its principal establishment.

246 The internal affairs, the activities and undertakings of a legal person are governed by law or, in the absence of any legal provision, by its statutes or by-laws.

247 The directors of the legal person act on its behalf in all matters.

They have all the rights, powers and duties of an administrator of the property of others entrusted with full administration.

248 The statutes of a legal person may restrict the objects pursued by that person, and its sphere of activity, or provide modalities relating to their exercise.

No person may invoke the nullity of an act performed by a legal person on the sole ground that the act derogates from the statutes of that person or its by-laws, subject to the provisions of law applicable to the publication of real rights.

249 The members of a legal person are personally and jointly liable for the debts of that person, subject to express provision of law.

250 In the event of fraud, even when the law restricts the personal responsibility of the founders, members or directors of a legal person, the court, on application by any interested person, may charge the founders, members or directors, or any of them, with the debts of the legal person, to an amount deemed equitable.

251 The members cannot be made responsible for the debts unless it is proven that they participated in the act reproached or derived personal benefit from it.

The founders and directors are exempted from that responsibility if they prove that they did not participate in the act reproached and did not derive benefit from it.

252 No legal person may act as:

1. a tutor to the person;

2. a tutor to the property or a curator, an executor, a

judicial sequestrator or a trustee, subject to the provisions of law;

3. a juror.

253 Meetings of the members of a legal person are held at the place of its domicile or at the place determined in its statutes or by-laws.

254 The directors must call an annual meeting of the members within eighteen months after its creation, and subsequently within eighteen months after the preceding annual meeting.

They may call a special meeting of the members at any time.

255 Notice of the date and place of a meeting of the members must be sent to each member at least twenty-one days before that meeting.

This notice must list the matters to be dealt with at the meeting.

Ordinary business of annual meetings, such as the examination of financial statements, the auditor's report, the election of directors and the appointment of the auditor, need not be mentioned.

256 The directors must keep an alphabetical list of the members and allow the members and the creditors of the legal person to consult that list during normal business hours.

257 A majority of the members constitutes a quorum at any meeting of these members, unless there is provision to the contrary in the statutes or by-laws.

258 If there is a quorum when a meeting opens, the members present may carry out the business of that meeting, unless

otherwise provided in the statutes or by-laws, regardless of whether or not there is a quorum throughout the meeting.

259 If there is no quorum when a meeting opens, the members present may adjourn it to a date and place of their choice, but they may not deal with any other business.

If there is no quorum at the subsequent meeting, the members present may deal with the business on the agenda of the preceding meeting, unless otherwise provided in the statutes or by-laws.

260 If the legal person is made up of one member only, that member constitutes a meeting.

261 Members vote by head-count, by a show of hands or, upon the request of any member, by secret ballot.

262 A written resolution signed by all members has the same value as one adopted in a meeting of members, and as one which meets the requirements of this Code respecting meetings of the members.

A copy of the resolution must be kept with the minutes of the meetings of members.

263 Three members may request the directors to call a meeting of the members specifying, in a written notice, the business to be dealt with during that meeting.

If the directors fail to call a meeting within twenty-one days after receipt of this notice, any member who signed the notice may call one.

The costs of calling and holding a meeting called in accordance with the preceding paragraph are borne by the legal person, unless the members object to this by resolution during the meeting.

264 The notice calling an annual meeting of the members must be accompanied by a balance sheet, a statement of revenue and expenditure for the previous fiscal year, a statement of the debts and claims and, where applicable, any draft resolution amending the statutes of the legal person or its undertaking.

265 Any member may delegate his right to vote to a mandatary.

The mandate must be in writing.

266 A legal person may exist in perpetuity.

267 In addition to the grounds provided by law, a legal person is dissolved by:

1. the expiry of the term or the fulfilment of the condition attached at the time of its creation;
2. the accomplishment of the object for which it was created, or the impossibility of accomplishing that object;
3. the consent of all the members;
4. the effect of any cause provided in the statutes or by-laws.

268 In the absence of any express provision in the law or in the statutes or by-laws of a legal person which has been dissolved, that person is liquidated under the *Winding-up Act*, as far as possible.

The provisions of this article apply, however, only if the legal person was solvent when it was dissolved. If it was not solvent, the provisions governing bankruptcy apply.

269 The juridical personality of a legal person continues to exist until that person is liquidated.

270 Subject to the rights of creditors and third parties, and

failing express provision in the law or in the statutes or by-laws of a legal person concerning the devolution of its property, the rules governing irregular succession apply.

CHAPTER II

CORPORATIONS

271 A corporation is a legal person which exists in perpetuity subject to the provisions of the law or of the statutes governing it and, notwithstanding Article 249, whose members are not personally responsible for its acts, omissions or debts.

272 A corporation may be created only in accordance with the formalities prescribed by law.

273 A corporation may have only one member.

274 A member of a corporation is personally responsible for anything he has promised to contribute.

He may also be personally responsible as a director of the corporation.

275 The internal affairs and activities of a corporation are managed exclusively by a board of directors, subject, where allowed, to any unanimous agreement of the members of the corporation.

276 The board of directors is made up of at least three directors.

If there are fewer than three members in the corporation, however, its board of directors may be made up of only as many directors as it has members.

277 The directors of a corporation, who make up the board of directors, are appointed by its members according to the procedure laid down by law, by the statutes or by the by-laws.

The directors need not be members of the corporation.

278 No person may be a director of a corporation if he is:

1. a minor;
2. a person of major age under tutorship or curatorship;
3. notoriously insolvent, or bankrupt.

279 An officer of a bankrupt corporation may not become or remain a director of another corporation, unless the court authorizes him to do so.

280 A legal person may be a director of a corporation.

When appointed, it must appoint a permanent representative who is subject to the same conditions and obligations and who incurs the same responsibility as if he were a director in his own right, without prejudice to the solidary responsibility of the legal person whom he represents.

The legal person which dismisses its representative must see to his replacement without delay.

281 On motion by any interested person, the court may forbid any of the following to act as a director of a corporation:

1. a person found guilty of an indictable offence involving fraud or dishonesty, whether in relation to a corporation or not;
2. a person found guilty of an offence, in relation to the formation, administration or liquidation of a corporation;
3. a person who repeatedly fails to comply with the law governing corporations or to execute his obligations as an administrator of property belonging to another;
4. a person whose behaviour with regard to the administration of a corporation is dishonest or imprudent.

282 The interdiction ordered by the court may not extend for more than five years after the last act with which the person concerned is reproached.

If that person has been sentenced to imprisonment, however, the interdiction may be extended, but not beyond five years after the term of imprisonment.

283 The court which issued the order for interdiction may remove the interdiction, on motion by the person concerned and on conditions considered appropriate.

284 Any person who infringes an order rendered under Article 281 commits an offence punishable, on summary conviction, by a fine of not more than five thousand dollars, or by imprisonment for not more than six months, or by both.

285 No person may be appointed a director of a corporation without his consent.

No person may imply that another person will be appointed a director or will act in that capacity without the consent of that person.

286 A director of a corporation is appointed for not more than three years.

The mandate is renewable.

287 Not all the directors appointed at the same meeting need hold office during the same period.

288 A director appointed for an indeterminate period ceases to hold office at the close of the first meeting of members which follows his appointment.

289 Notwithstanding Articles 286 and 288, if no director is appointed at the annual meeting of members, the directors in office continue to act until their successors are appointed.

290 Even if the meeting of members does not appoint the number of directors required by the statutes or the by-laws, those directors who are appointed or who remain in office may act if the quorum required is attained.

291 An act performed by a director or an officer of a corporation is valid, despite any irregularity in his appointment or his election or absence of quality.

292 Subject to the law, the statutes or the by-laws of the corporation, the board of directors may create positions for officers of the corporation and delegate to those officers the exercise of powers respecting the internal affairs and the activities of the corporation.

A director may be appointed to such a position.

The same person may hold more than one position.

CHAPTER III

LEGAL PERSONS IN PUBLIC LAW

293 Public legal persons, except the Crown, are subject to this Code and to all laws applicable to persons, except as otherwise expressly provided by law.

The same is true of organizations, partnerships, and agents or mandataries of the Crown.

294 The Crown must execute its legal and contractual obligations in the same manner as a person of major age.

The provisions of this Code and of the laws governing responsibility of persons apply to the civil responsibility of the Crown, subject to this chapter.

295 The term "servant of the Crown" includes in particular:

1. a member of the Executive Council;
2. a member of the civil service within the meaning of Section 2 of the *Civil Service Act*;
3. a cadet and a member of the Québec Police Force;
4. an employee.

It does not include a contractor, a corporation which is a mandatary or agent of the Crown, or the employees of such a corporation.

296 Notwithstanding Article 294, the Crown is not responsible for any damage caused when a member of the Executive Council exercises, or fails to exercise, discretionary power.

297 A servant of a public legal person or of the Crown does not cease to act in the performance of his duties merely because he commits an illegal or unauthorized act, or one which is *ultra vires*, or because he acts as a peace officer.

298 A recourse in damages against a public legal person, including the Crown, must be preceded by a notice in writing stating the damage suffered and the amount of the claim.

This notice is served on the Deputy Attorney-General of Québec by registered or certified mail within three months after the time when the damage occurred.

BOOK TWO

THE FAMILY

TITLE ONE

MARRIAGE

CHAPTER I

PROMISES OF MARRIAGE

1 No obligation to contract marriage arises from any engagement or reciprocal promises of marriage.

2 Malicious breach of a promise of marriage entails the obligation to repair the damage caused.

However, no indemnity is payable for the loss of any benefits which the marriage might have procured for the plaintiff.

3 Any promise that a lump sum indemnity will be paid in the event of a broken promise of marriage is without effect.

4 Gifts made to intended consorts in contemplation of their marriage may be reclaimed if the marriage does not take place.

This rule does not apply to presents of little value.

5 The recourses provided for in the event of breach of promise of marriage must be exercised, on pain of forfeiture, within one year after the breach, or within one year after the donor becomes aware of it.

CHAPTER II

CONDITIONS REQUIRED FOR CONTRACTING MARRIAGE

6 Marriage requires the free and enlightened consent of the intended consorts.

7 Free and enlightened consent is the agreement expressed by a man and a woman to take each other as husband and wife.

8 A person of major age under tutorship may not contract marriage.

9 A person may not contract marriage before he is eighteen years old.

Nevertheless, when an intended consort is sixteen years of age, a judge may grant a dispensation for serious reasons.

The minor may submit the application alone.

His parents or his tutor if any, and any person who has *de facto* custody of him, must be summoned.

10 A second marriage may not be contracted before the annulment or dissolution of the first.

11 No person may contract marriage with:

1. any of his ascendants or descendants;
2. his brother or his sister, or any of their children in the first degree.

In cases of adoption, however, the judge may permit a marriage in the collateral line according to the circumstances.

CHAPTER III

OPPOSITION TO MARRIAGE

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

The Minister of Justice may do so as well.

13 A minor may oppose a marriage with the authorization of a judge.

He may act alone as defendant.

14 The rules of procedure governing opposition are found in the Code of Civil Procedure.

15 If the opposition is dismissed, the opponent may be liable for damages, according to the circumstances.

CHAPTER IV

THE SOLEMNIZATION OF MARRIAGE

16 Marriage must be contracted openly, in the presence of two witnesses, before an officiant recognized by law.

17 Every minister of religion authorized by law to solemnize marriage and, in the judicial district for which they are appointed, the prothonotary and each deputy whom he appoints, are competent to solemnize marriage.

18 No minister of religion may be compelled to solemnize a marriage to which there is any impediment according to his religion.

19 The officiant assures himself as to the identity and marital status of the intended consorts.

For this purpose, he must obtain:

1. an authentic copy of the act of birth of each consort, or of the judgment replacing that act;
2. an authentic copy of the judgment authorizing a consort to marry if that consort is between sixteen and eighteen years old;
3. an authentic copy of the final judgment dismissing an opposition to the marriage;
4. an authentic copy of the final judgment and, where applicable, a certificate to the effect that the judgment is no longer subject to appeal, when one of the intended consorts is divorced or his marriage has been annulled;
5. an authentic copy of the act of death of his spouse when one of the intended consorts is widowed.

If he deems it necessary, he may also require an oath or a solemn affirmation of two witnesses who know the intended consorts.

20 The officiant must also inform the intended consorts of existing community resources in matters of preparation for marriage, and also of the advisability of a pre-marital medical examination.

21 A marriage may not be solemnized until twenty days have passed after the evidence required in Article 19 is received.

The judge may reduce this period, however, if the circumstances so justify.

22 At the outset of the marriage ceremony, the officiant verifies the identity of the intended consorts and assures himself that all formalities have been completed.

In the presence of the witnesses, he reads Articles 41 and 42 to the intended consorts.

He requests, and receives from each party personally, a declaration of their wish to take each other as husband and wife; he then declares them united in marriage.

23 He draws up the declaration of marriage immediately and reads it to the consorts and the witnesses.

CHAPTER V

PROOF OF MARRIAGE

24 Marriage is proven by an act of marriage or by the judgment replacing the act.

Possession of the status of legitimate consorts compensates for non-compliance with the formalities respecting the act of marriage.

CHAPTER VI

NULLITY OF MARRIAGE

25 Marriage is absolutely null when contracted:

1. by a person incapable of discernment;
2. by a person of major age under tutorship;
3. by a person already married;
4. by a person less than sixteen years old;
5. in spite of an impediment due to relationship.

26 Nevertheless, a marriage contracted by a consort under tutorship or incapable of discernment may no longer be attacked if the consorts have cohabited for one year following the removal of tutorship or the recovery of discernment.

27 Marriage is relatively null:

1. when either consort has not given free consent;
2. when either consort has been misled by an error as to the identity of his spouse;
3. when either consort has been misled by an error as to an essential characteristic of his spouse, through the fraudulent practices of the spouse or by a third party, with the knowledge of that spouse.

Nevertheless, the marriage may no longer be attacked if there has been continuous cohabitation for one year from the time the consort acquired complete freedom or became aware of his error.

28 A simulated marriage may be declared null upon application by either party.

The action in nullity may no longer be instituted if there has been continuous cohabitation for one year.

A simulated marriage is one in which one or both parties go through the formalities of marriage without the intention of contracting marriage.

29 A marriage contracted by a person who is impotent at the time of the marriage may be declared null upon application by either consort.

The action in nullity may no longer be instituted if the marriage has been consummated.

30 A marriage contracted without judicial dispensation by a consort between sixteen and eighteen years old may be declared null upon application by either consort, by the father or the mother of the consort who has not reached the required age, or by the person who has *de facto* or *de jure* custody of that consort, although the court may decide according to the circumstances.

The action in nullity may no longer be instituted if one year has passed after the conditions regarding age are satisfied.

31 A marriage which has not been contracted openly or before a competent officiant may be declared null upon application by any interested person, although the court may decide according to the circumstances.

32 Nullity of a marriage, for whatever reason, never affects the rights of the children.

33 A consort is presumed to have contracted marriage in good faith unless, when declaring the marriage null, the court declares him to be in bad faith.

34 A consort in good faith is entitled to the civil effects of his marriage once it has been pronounced null.

35 If one consort only was in good faith, he may either take back his property or apply for liquidation of the matrimonial regime which is deemed to have existed.

36 A consort in bad faith takes back his property, subject to the preceding article.

37 A consort in good faith is entitled to the gifts *inter vivos* made to him in consideration of his marriage, unless the matrimonial agreements provide otherwise.

The court, however, may order the payment deferred for a period of time which it determines.

38 The court may annul or reduce any irrevocable gifts *mortis causa*, taking the circumstances of the parties into account.

39 Nullity of the marriage renders null the gifts made in consideration of the marriage to a consort in bad faith.

40 Articles 249 to 258 apply to nullity of marriage.

However, a consort in bad faith loses all right to support.

CHAPTER VII

EFFECTS OF MARRIAGE

Section I

Rights and duties of consorts

41 Consorts have identical rights and obligations in marriage.

They owe each other fidelity, succour and assistance.

They must live together.

42 The consorts together ensure the moral and material direction of the family and the education of the children born of their union.

43 If it is impossible for one consort to manifest his intention for any reason, or if he cannot do so within the proper time, the other may act alone in emergencies and for the current needs of the household.

44 Marriage does not affect the legal capacity of consorts.

Their powers alone can be restricted by their matrimonial regime and by this chapter.

45 Either consort may give his spouse a mandate to represent him, even in the exercise of the rights and powers attributed to him by the matrimonial regime.

46 The court may confer upon either consort the administration of the property of his spouse or of the common property, when the spouse is unable to manifest his intention or cannot do so within the proper time.

The court fixes the modes and conditions for exercising the powers conferred.

The court declares the powers withdrawn once it is established that the judicial mandate is no longer necessary.

47 Consorts contribute towards the expenses of the marriage in proportion to their respective means.

Each consort may make his contribution by his activity within the home.

48 A consort who enters into a contract for the current needs of the marriage assumes alone the obligations for the whole.

He also commits his spouse to the extent that the spouse is bound to contribute to the expenses of the marriage.

The spouse is not responsible for the debt, however, if he informed the other contracting party of his will not to be liable.

49 The rules in Articles 47 and 48 apply also to *de facto* consorts.

In this Code, *de facto* consorts are those who, although not married to each other, live together openly as husband and wife in a continuous and stable manner.

50 A consort may be authorized by the judge to enter alone into any act for which the concurrence or consent of his spouse would be required, provided such concurrence or consent

cannot be obtained for any reason, or the refusal is not justified by the interest of the family.

The authorization must be special and for a determined time; it may be amended or revoked.

An act entered into in accordance with this authorization may be invoked against the spouse, but entails no personal obligation for him.

51 Under any regime, a consort who has administered the property of his spouse accounts only for the existing fruits and not for those consumed before he was put in default to render an account, unless there is express stipulation to the contrary.

52 If one consort exceeds his powers over the property of the community or over his acquests, the other may apply for nullity of the act, unless he has ratified it.

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

Section II

The family residence

53 The consorts choose the principal family residence together.

Exceptionally, the court may authorize either consort to take up separate residence for a limited time, and may issue such orders as are appropriate in the interest of the family.

54 Neither consort may alienate any of his household furniture used by the family, charge it with a real right or remove it from the principal family residence, without the consent of his spouse.

This provision does not apply, however, to a consort abandoned by his spouse.

55 A consort who has not consented to an act concerning any housefold furniture used in the principal family residence may ask that the act be annulled, unless he has ratified it.

However, no act by onerous title can be annulled if the other contracting party was in good faith.

56 In the event of separation as to bed and board, divorce or annulment of marriage, the court may, in the interest of the family or of either consort, under any regime and according to the conditions it deems reasonable, attribute to one consort the ownership of the household furniture which belongs to the other and is used in the principal family residence.

57 For the purposes of the preceding articles, "furniture" does not include books, instruments necessary for the practice of a profession, art or trade, or collections of objects of an artistic or a scientific nature.

58 No consort who is the lessee of the principal family residence may, without the consent of his spouse, sublet it, transfer it or terminate the lease on it before the expiry of the term agreed upon or provided by law.

59 No consort who owns an immoveable with fewer than four dwellings, used in whole or in part as the principal family residence and against which a declaration of residence has been registered, may, without the consent of his spouse, alienate the immoveable, charge it with a real right or lease that part of it reserved for the use of the family.

The same applies to a usufructuary, an emphyteutic lessee and a person who has a right of use.

60 If no consent is given, an act entered into by the consort who owns the immoveable or is the usufructuary, lessee or

emphyteutic lessee of the principal family residence, or has a right of use over it, may be annulled upon application by his spouse, unless the spouse has ratified that act.

61 The declaration of residence is made by either consort in the form of a notarial instrument *en minute.*

It contains the information necessary for registration.

62 The registration of a declaration of residence is cancelled, at the request of any interested person, in the cases provided for in Article 96 of the Book on *Publication of Rights.*

63 The court orders the registration of a declaration of residence cancelled in the cases provided for in Article 99 of the Book on *Publication of Rights.*

64 In the case of separation as to bed and board, divorce or annulment of marriage, the court, according to the conditions it deems reasonable, may attribute the lease of the principal family residence to the spouse of the lessee.

The attribution may be invoked against the lessor as soon as a final judgment is served upon him, without prejudice to his rights against the original lessee, until the expiry of the term agreed upon or provided by law.

65 When the immoveable used as the principal family residence is one upon which either consort or both consorts have a right of ownership, the court, upon dissolution of the matrimonial regime by death, divorce, separation as to bed and board or annulment of the marriage, may attribute, on conditions which it determines, the right of ownership or habitation to either consort or, in the case of death, to the survivor, upon payment of compensation if need be.

66 When the family residence cannot be suitably relocated, the consort vested with the right by which the principal family

residence is assured, or his spouse, may request the court to order suspension of the execution of a judgment of eviction for a limited time and according to the conditions it considers reasonable.

Section III

General provisions

67 If the consorts disagree as to the moral and material direction of the family, the contribution to the expenses of the marriage, the education of the children or the choice of the family residence, either of them may apply to the court.

After endeavouring to reconcile the parties, the court settles the dispute, taking the best interest of the family into account.

68 This chapter, except Article 47, is imperative and applies to all consorts, whatever their matrimonial regime.

CHAPTER VIII

MATRIMONIAL REGIMES

Section I

General provisions

69 Any kind of stipulation may be made in a matrimonial agreement, even some which would be void in any other act *inter vivos*, in particular, the renunciation of a succession which has not yet devolved or the renunciation of the successoral reserve of a surviving spouse, the gift of future property, the conventional appointment of an heir, and other provisions in contemplation of death.

However, all other stipulations contrary to imperative

provisions of law, or to public order or good morals are excepted from this rule.

Accordingly, the consorts may not derogate from the provisions governing the effects of marriage or from those respecting parental authority, minority and protected persons.

70 The law determines the matrimonial regime, but only if no special stipulations are made in the matrimonial agreements.

71 Consorts are subject to the regime of partnership of acquests unless, before their marriage was solemnized, they made special agreements by marriage contract.

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

A matrimonial regime changed during the marriage takes effect on the day when the act attesting to the change was homologated.

In neither case may the parties stipulate that it will take effect on another date.

73 A matrimonial agreement made by a minor not authorized to marry or by a person under tutorship is absolutely null.

74 No person under curatorship may make a matrimonial agreement without the assistance of his curator.

An agreement made in violation of this article may be impugned only by the person under curatorship or by his curator, and only during the year immediately following the solemnization of the marriage or the homologation of the matrimonial agreement, as the case may be.

75 A matrimonial agreement must be attested to, on pain of absolute nullity, by a notarial deed *en minute* before the marriage is solemnized.

A change made in a matrimonial agreement before the solemnization of the marriage must be attested to, on pain of absolute nullity, by a deed made in like form, in the presence and with the consent of all those whose rights are affected by the change.

For a modification or suppression of a gift made to children to be born, such children are represented by the future consorts.

76 During their marriage, consorts may change their matrimonial regime and any stipulation made in their matrimonial agreement and make any change respecting a gift or the status of specific property, provided the change does not compromise the interests of the family or the rights of their creditors.

Gifts made in marriage contracts, including those made in contemplation of death, may be changed even if they are stipulated as irrevocable, provided the consent of those who accepted the gifts or that of their representatives is obtained.

77 The agreements made between consorts under the preceding article must be attested to, on pain of absolute nullity, by a notarial deed *en minute*, and homologated by the court of their common domicile or of the domicile of either consort.

78 An act made under Articles 75 and 77 has effect with respect to third parties, but only after a notice is caused to be registered by the parties in the central register of matrimonial regimes.

This notice states:

1. the surname, given names, and date of birth of each consort;
2. the surnames and given names of both parents of each consort, if they are known;
3. the date of the act, and the surname, given names and domicile of practice of the notary who received it;
4. the date of the act attesting to any matrimonial agreements which have been changed, and the surname, given names and domicile of practice of the notary who received it;
5. the date of the judgment, the number of the file, and the name of the district and of the court, where need be.

79 Dissolution of a matrimonial regime resulting from a judgment granting separation as to property, separation as to bed and board, nullity of marriage, or divorce, has effect with regard to third parties only after a notice of that judgment, containing the information required under the preceding article, is registered in the central register of matrimonial regimes.

Section II

Partnership of acquests

§ - 1 Composition of the partnership of acquests

80 The property which each consort possesses when the regime comes into effect or which he subsequently acquires constitutes acquests or private property according to the rules which follow.

81 The acquests of each consort include all property not declared private property by a provision of this section.

In particular:

1. the proceeds of his work during the regime;
2. the fruits and income due or collected from all his private property or acquests during the regime.

82 The private property of each consort consists of:

1. property owned or possessed when the regime comes into effect;
2. property which accrues to him during the regime by succession, legacy or gift, and the fruits and income derived from that property if the testator or donor has so expressly provided;
3. property acquired by him to replace private property;
4. the rights or advantages which accrue to him as a contingent owner or as a beneficiary, designated by the spouse or by a third party, under a contract or plan for a retirement pension or other annuity, or for insurance of persons;
5. his clothing, personal linen, decorations, diplomas and correspondence;
6. the instruments required for his occupation, saving compensation where applicable.

83 Property acquired partly from private property and partly from acquests is also private property, saving compensation in favour of the acquests.

However, if the value of the acquests is equal to or greater than that of the private property used to acquire this property, that property becomes an acquest subject to compensation, even though the cost has not been paid.

The same rule applies to insurance of persons, retirement pensions and other annuities which a consort may redeem in advance.

84 When, during the regime, a consort acquires another share in property of which he was already privately an undivided co-owner, this acquired share is also his private property, saving compensation where applicable.

However, if the value of the acquests used to acquire this share or several shares in succession is equal to or greater than half the total value of the property of which the consort has become the owner, this property becomes an acquest, subject to compensation.

85 The right of a consort to support, to a disability allowance, or to any other benefit of the same nature remains his private property; however, all pecuniary benefits derived from these are acquests, as are all those that fall due or are collected during the regime, or are payable at his death to his heirs and legal representatives.

The same applies to retirement pensions and other annuities which the holder cannot redeem in advance.

No compensation is due by reason of any amount or premium paid out of the acquests or the private property.

86 Compensation received as damages for physical or moral injury to the person, the right to the claims or compensation, and the actions arising from them, are also private property.

87 Property acquired as an accessory of or an annex to private property, and any construction erected on an immoveable which is private property, remains private, saving compensation if need be.

However, if the accessory or annex was acquired, or the construction erected, from acquests, and if its value is equal to or greater than that of the private property, the whole becomes an acquest subject to compensation.

88 The same criterion applies to accessories or annexes acquired successively.

However, in this case, the total value of all private property and acquests used since the first transaction involving this property must be taken into consideration.

89 The proceeds of any distribution of a capital nature pertaining to securities which are the private property of one consort remain his private property.

This rule applies in particular to the proceeds of any capitalization of reserves or surplus, of share dividends, of any redemption or prepaid premiums, and any securities acquired by the exercise of a right of subscription.

However, share dividends and securities acquired under a right of subscription are private property only subject to compensation.

90 The pecuniary proceeds of any creative work or of the total or partial transfer of the right to exploit it are acquests if they are collected or fall due during the regime.

The right to divulge the work, to fix the conditions of its exploitation and to defend its integrity remains private property.

91 All property is presumed to constitute an acquest, both between the consorts and with respect to third parties.

92 Any property which a consort is unable to prove to be his private property or acquest is presumed to be held by both consorts in undivided ownership, half by each.

§ - 2 **Administration of property and liability for debts**

93 Each consort has the administration, the enjoyment and the free disposal of his private property and acquests.

He may not, however, without the consent of his spouse,

dispose of his acquests *inter vivos* by gratuitous title, with the exception of modest sums and customary presents.

Consent given by a consort does not have the effect of binding him personally.

94 The preceding article does not limit the right of a consort to designate third parties as contingent owners or as beneficiaries of a retirement pension or other annuity, or of insurance of persons.

No compensation is due by reason of the sums or premiums paid out of the acquests if the designation is in favour of the spouse or of the children of the consort or of the spouse.

95 Each consort is liable on both his private property and his acquests for all debts incurred by him before or during the marriage.

While the regime lasts, he is not liable for the debts incurred by his spouse, subject to Articles 47 and 48.

§ - 3 **Dissolution and liquidation of the regime**

96 The regime of partnership of acquests is dissolved by:

1. the death of either consort;
2. a declaratory judgment of absence or of death;
3. a conventional change of regime in accordance with Articles 76 and following;
4. a judgment which pronounces divorce, separation as to bed and board, or separation as to property.

97 Each consort retains his private property after the regime is dissolved.

He may accept or renounce the partition of his spouse's

acquests, notwithstanding any stipulation to the contrary even by matrimonial agreements.

98 Acceptance may be either express or tacit.

No consort who has interfered in the management of the acquests of his spouse after the regime is dissolved may renounce partition.

Conservatory acts or acts of simple administration do not constitute interference.

99 Renunciation must be made by notarial deed *en minute* or by judicial declaration recorded by the court.

A consort who has not registered his renunciation within one year following the date of the dissolution is deemed to have accepted.

100 If a consort renounces partition, the share of his spouse's acquests to which he would have been entitled remains vested in that spouse.

However, the creditors of the consort who renounces partition to the prejudice of their rights may attack the renunciation and accept the share of the acquests of their debtor's spouse in the place and stead of that debtor.

In this case, the renunciation is annulled only in favour of the creditors and only to the extent of the amount of their claims; it is not annulled in favour of the renouncing consort.

101 A consort who has abstracted or concealed acquests forfeits his share of them unless his spouse renounces them.

Moreover, he forfeits the benefit of emolument.

102 Acceptance and renunciation are irrevocable.

103 When the regime is dissolved by death, the heirs of the deceased consort may accept or renounce the partition of the surviving spouse's acquests and Articles 97 to 102 apply to them.

If one of the heirs accepts partition and the others renounce it, the heir who accepts may take only the portion of the acquests which he would have had if all had accepted.

104 When a consort dies while still entitled to renounce partition, his heirs have a further period of one year from the date of the death in which to register their renunciation.

105 When a consort's acquests are accepted, the property of his patrimony must first be divided into two masses, one comprising the private property and the other the acquests.

106 A statement is then prepared of the compensation owed by the mass of private property to the mass of the consort's acquests and vice versa.

107 The compensation is equal to the enrichment enjoyed by one mass to the detriment of the other or to the amount of the actual expense if it exceeds the enrichment.

108 The enrichment is assessed on the day the regime dissolves.

However, when the property acquired or improved was alienated during the regime, the enrichment is valued as of the day of the alienation.

109 No compensation is due by reason of expenses incurred solely for the maintenance or preservation of the property.

110 Unpaid debts incurred for the benefit of the private property give rise to compensation for the resulting enrichment, as if they had already been paid out of the acquests.

111 Payment out of acquests of any fine incurred under a penal provision of the law gives rise to compensation in all cases.

112 If the statement shows a balance in favour of the mass of acquests, the consort who holds the patrimony makes a return to the mass for partition, either by taking less, or in value, or from his private property.

If the statement shows a balance in favour of the mass of private property, the consort removes assets from his acquests up to the amount owed.

113 Once the settlement of compensation has been completed, the mass of acquests of the consort who holds the patrimony is evenly divided with the spouse, according to the rules of this Code governing partition, unless the consort who holds the patrimony prefers to reimburse his spouse by paying all or part of what is due.

If, however, the dissolution of the regime results from the death or absence of the consort who holds the patrimony, his spouse may require, on payment of any balance, that his share include the family residence and the household furniture and any other property forming part of the mass for partition.

If there is no agreement between the parties, the evaluation of property for the purposes of applying this article is made by experts designated by the parties themselves or, in the absence of designation, by a judge of the Superior Court of the district of the conjugal domicile.

114 If there is a balance, the court fixes the conditions of payment, especially that part which may be paid on instalments, the amount and due dates of payments, and the interest rate.

115 Dissolution of the regime cannot prejudice the recourse,

before the partition, of former creditors against all of their debtor's patrimony.

After the partition, the former creditors may sue the consort who is their debtor, and also his spouse, for payment of their claims, but only to the extent of the benefit derived by that spouse.

116 Each consort, however, has recourse against the other for one-half of the sums that he has thus been called upon to pay.

Section III

Community of property

117 The regime of community of moveables and acquests provided for below is established by a simple declaration made to this effect in the matrimonial agreement.

The regime may be modified by special clauses.

§ - 1 Community of moveables and acquests

I - Assets and liabilities of the community of moveables and acquests

118 The assets of the community consist of:

1. the moveable property which the consorts possess when the regime comes into effect, and any moveable property which accrues to them subsequently by gratuitous title during the regime, provided the donor or the testator has not provided otherwise, and the fruits and income derived from that property;

2. the proceeds of the work of the consorts during the regime, subject to Articles 216 and following respecting reserved property;

3. the fruits and income derived from the private property of the consorts;
4. the immoveables which they acquire during the regime, subject to sub-paragraph 4 of Article 132.

119 Any property is deemed to be an acquest of the community unless it is established as the private property of one consort by the application of a provision of law.

120 The private nature of property is established both between the consorts and with respect to third parties according to ordinary rules of law.

121 The immoveables which each consort possesses when the regime comes into effect or which are acquired by gratuitous title during the regime do not enter into the community unless the gift is made jointly to both consorts.

122 An immoveable acquired by a consort between the moment when the matrimonial agreement stipulating community is made and the moment when the marriage is solemnized enters into the community, unless it was acquired in execution of some clause of the contract, in which case it is governed according to the agreement.

123 If the gift was made to one consort on condition that he pay the donor's debts, or in payment of a debt owed by the donor, the immoveable does not enter into the community, saving compensation or indemnity.

124 An immoveable acquired during the regime in exchange for another immoveable belonging to one consort does not enter into the community and is subrogated in the place of the immoveable so alienated, subject to compensation if there is a balance.

If, however, the balance exceeds half the value of the property acquired in exchange, the property enters into the community, subject to compensation.

125 When, during the regime, a consort acquires a share of an immoveable of which he was a private co-owner, the share so acquired remains his private property, subject to any compensation to the community, even though the price has not been paid.

Nevertheless, if he acquires a new share or new shares successively, using private or community property, the property remains private if the total value of the private property so used is equal to or greater than the total value of the community property; in other cases, the property will be part of the community, subject to compensation.

126 All rights or advantages which accrue to a consort as a contingent owner or as a beneficiary designated by the spouse or by a third party, under a contract or plan for a retirement pension or for another annuity, or for insurance of persons, are private property.

127 The proceeds of any distribution of a capital nature pertaining to securities which are the private property of one consort remain his private property.

This rule applies in particular to the proceeds of any capitalization of reserves or surplus, of share dividends, of any redemption or prepaid premiums, and of any securities acquired by the exercise of a right of subscription.

However, share dividends and securities acquired by a right of subscription are private property only subject to compensation.

128 Property acquired as an accessory of or annex to private property, and any construction erected on an immoveable which is private property, remain private, saving compensation if need be.

If, however, the accessory or annex was acquired, or the construction erected, from the common property, and if its

value is equal to or greater than that of the private property, the whole becomes common property, subject to compensation.

129 The same criterion applies to accessories or annexes acquired successively.

However, in this case, the total value of the private property and community property used since the first transaction involving this property must be taken into consideration.

130 The right of a consort to support, to a disability allowance or to any other benefit of the same nature remains his private property; however, all pecuniary benefits derived from it are common property if they fall due or are collected during the regime or are payable at his death to his heirs and legal representatives.

The same applies to retirement pensions and other annuities which the holder cannot redeem in advance.

No compensation is due by reason of any amount or premium paid out of the community property or the private property.

131 The pecuniary proceeds of any creative work or of the total or partial transfer of the right to exploit it are community property if they are collected or fall due during the regime.

The right to divulge the work, to fix the conditions of its exploitation and to defend its integrity remains private property.

132 The private property of each consort consists of:

1. his clothing, personal linen, decorations, diplomas, and correspondence;
2. compensation collected during the regime as damages

for physical or moral injury to the person, and the right to the compensation, and the actions arising from it;

3. the instruments required for his occupation, saving compensation where applicable;
4. property acquired by him to replace private property.

133 The liabilities of the community consist of:

1. all debts, in capital, arrears or interest, contracted by either consort during the community, in accordance with the rules provided in Articles 141 to 149;
2. the arrears and interest, but not the capital, of the rents and debts which are personal to the consorts;
3. the support of the consorts, the education and maintenance of the children and any other expenses of the marriage;
4. the debts of each consort when the regime first takes effect, and those which affect the successions and gifts which accrue to him during the regime, up to the value of the property which forms part of the community;
5. the maintenance repairs of the immoveables which do not form part of the community.

134 Payment of the debts which each consort incurred before the regime could be set up against creditors may be sued for out of the property which at that time formed the pledge of the creditors and also, if the property is insufficient, out of the common property, so that the distribution of debts cannot harm the creditors.

The community is entitled to compensation for the amount of the debts it has paid beyond the value of the property received.

135 The creditors of the succession may sue for payment out of all the property of the inheritance and furthermore, in cases of outright acceptance, out of both the private property of the

consort who succeeds and the common property, to the extent specified in Article 136, subject to the respective compensations when the debt must not remain a charge upon the person who paid it.

136 If the succession falls to the administrator of the community, the creditors of the succession may sue for payment out of his private property and the common property.

137 If the succession falls to the spouse and he accepts it outright without opposition on the part of the administrator, the creditors of the succession may sue for payment out of that spouse's private and reserved property and out of the common property.

138 If the succession which falls to the spouse is accepted by him in spite of opposition by the administrator, the creditors may sue for payment out of the property of the succession, out of the consort's private and reserved property, and out of the property of the community, but only to the extent that the community has benefited.

The administrator of the community must prove the extent to which the community has benefited.

139 The creditors of the succession need make no distinction as to whether or not the property of the succession remains the private property of the consort who inherits.

140 The rules in Articles 133 and 135 to 139 govern the debts attached to a gift or a legacy as well as those which result from a succession.

141 The creditors may sue for payment of the debts contracted by the administrator of the community during the regime, not only out of his private property but also out of the property of the community.

142 The creditors may sue for payment of the debts contracted by the spouse without opposition from the administrator, out of both the property of the community and the spouse's private and reserved property.

The administrator may oppose any such act entered into by his spouse within three months after he becomes aware of it, unless he has already consented to it; the only effect of the consent of, or absence of opposition from, the administrator to an act performed by his spouse is to bind the community.

143 The creditors may sue for payment of the debts contracted by the spouse, in spite of opposition from the administrator, out of the spouse's private and reserved property.

However, their right to be paid out of the property of the community is limited to the pecuniary advantage the community derived from the act of the spouse.

144 A consort common as to property who carries on a trade or occupation without opposition from the administrator binds the community for all that relates to the trade or occupation.

145 A consort who carries on a trade or occupation despite opposition from the administrator binds the community, but only up to the amount of the pecuniary advantage that the community derives from it.

146 In the cases provided for in Articles 138, 142, 143 and 145, third parties are deemed to have been aware of the opposition of the administrator of the community from the date on which the administrator files a declaration to that effect in the office of the prothonotary of the Superior Court of the district where the succession opened, the administrator is domiciled, or the trade or occupation is carried on as the case may be.

147 When, during the regime, the community becomes

liable for a debt attributable to one of the consorts alone, payment may not be claimed against the private property of the other.

When the community is solidarily liable for a debt, it is deemed attributable to the consorts. However, when one consort simply agrees to the other incurring the obligation, the debt of the community is attributable to the other alone.

148 Civil or penal fines incurred by a consort for a criminal or penal offence, an offence or a quasi-offence, or failure to fulfil any legal obligation, may be recovered out of the property of the community.

However, those incurred by the administrator of the community may not be recovered from the reserved property of his spouse.

149 The community is entitled to compensation when it is compelled to pay a debt incurred during the regime by one of the consorts in his own interest alone.

II - Administration of the community of moveables and acquests, and effect of the acts of the consorts

150 The consorts may agree that either of them will be the administrator of the community.

They are presumed to have selected the husband as the administrator in the absence of any express stipulation in the marriage contract.

151 The administrator alone manages the property of the community subject to Articles 157, and 216 and following.

152 The administrator may not hypothecate any immoveable property of the community, or otherwise alienate it by onerous title without the consent of his spouse.

However, without this consent he may sell, alienate or hypothecate any moveable property other than a business concern or the household furniture used by the family.

153 Without the consent of his spouse, he may not dispose of the property of the community by gratuitous title *inter vivos*, except modest sums and customary presents.

154 The consent given by the spouse of the administrator never has the effect of committing him personally with respect to his private or reserved property.

155 Articles 150 to 154 do not restrict the right of the administrator of the community to designate third parties as contingent owners or as beneficiaries of a retirement pension or other annuity, or insurance of persons.

No compensation is due by reason of the sums or premiums paid out of the property of the community if the designation is in favour of the spouse or of the children of the administrator or of his spouse.

156 An administrator is subject to the same obligations as the administrator of the property of another where applicable.

157 A consort may not bequeath more than his share of the community to the detriment of the other.

The bequest of an object which belongs to the community is subject to the rules applicable to the bequest of a thing only partly owned by the testator.

If the thing is included in the testator's share and is in his succession, the legatee is entitled to all of it.

158 The community owes compensation to the consort who owns private property whenever it has benefited financially from the property.

Conversely, a consort who owns private property owes compensation to the community whenever his property has benefited financially from the property of the community.

159 Reinvestment is perfect with respect to the consort whenever, at the time of the acquisition, he declares he is making the purchase with the proceeds from the alienation of private property, or for the purpose of replacing it. In the absence of a declaration, the private nature of the property may nevertheless be proven by any means.

When the price of the property acquired exceeds the sum invested or reinvested, the community is entitled to compensation. However, if the amount of the compensation is equal to or greater than half the price, the property acquired becomes part of the community, subject to compensation, even if the price has not yet been paid.

The same rule applies to insurance of persons and to retirement pensions and other annuities which the consort may redeem in advance.

160 If the consorts have jointly bestowed a benefit on their child, without stipulating the proportion they intended to contribute, they are presumed to have intended to contribute equally, whether the benefit has been furnished or promised from the property of the community or from the private property of one of them; in the second case, this consort is entitled to recover from the property of the other, half of what he has provided, with due consideration for the value of the property at the time of the gift.

III - Dissolution of the community

161 The regime of community is dissolved for the same reasons as those provided in Article 96 for dissolution of the regime of partnership of acquests.

IV - Acceptance of the community

162 After the community is dissolved, the spouse of the administrator, or his successors, may accept it or renounce it.

Any agreement to the contrary is without effect.

163 The spouse of the administrator who has interfered with the management of the property of the community may not renounce it.

Conservatory acts or acts of simple administration do not constitute interference.

164 The spouse of the administrator who has assumed the quality of common as to property may not renounce it or be relieved of this quality unless there has been fraud on the part of the administrator's heirs.

165 Within three months after the death of the administrator, the surviving spouse must have an inventory made of the property of the community, in the presence of the heirs of the administrator or after they have been duly summoned.

The inventory must be made in notarial form *en minute.*

166 However, the spouse of the administrator may renounce the community without inventory when:

1. the community was dissolved during the lifetime of the administrator;
2. the heirs of the administrator are in possession of all the property;
3. an inventory has been made at the request of the heirs of the administrator or was made shortly before his death;
4. there has recently been a seizure and general sale of the property of the community or it has been established by an official return that none existed.

167 Apart from the three months allowed the spouse of the administrator to make the inventory, he has a forty-day period in which to deliberate upon acceptance or renunciation; this period begins when the three months expire or when the inventory closes if it has been completed before the end of the three months.

168 The spouse of the administrator must make his renunciation within the three-month and forty-day periods, in a deed in notarial form *en minute* or by a judicial declaration recorded by the court.

169 If the spouse does not register his renunciation within one year after dissolution, he is deemed to have accepted.

170 If the spouse of the administrator is sued as common as to property, he may obtain from the court, according to the circumstances, an extension of the periods established in the preceding articles.

171 If the spouse of the administrator has not made the inventory or his renunciation within the periods prescribed or granted, he is not automatically precluded from so doing; on the contrary, he is allowed to do so as long as he has not interfered or acted as being in community; he may be sued as being in community until he has renounced, and is responsible for the costs incurred against him until his renunciation.

172 If the spouse of the administrator has abstracted or concealed any property of the community, he is declared to be in community, notwithstanding his renunciation.

The same rule applies to his heirs.

173 If the spouse of the administrator dies before the three months have expired and without making or completing the inventory, the heirs have a further period of three months from the death of the spouse to make or complete it, and forty days to deliberate after the closing of the inventory.

If the spouse dies after completing the inventory, the heirs have a further period of forty days after his death to deliberate.

Moreover, they may always renounce the community in the forms established with respect to the spouse of the administrator, and Articles 170 and 171 apply to them.

174 The creditors of the spouse of the administrator may impugn any renunciation made to the detriment of their rights, and may accept the community in their own right.

In this case, the renunciation is annulled only in favour of these creditors and up to the amount of their claims. It is not annulled in favour of the consort who has renounced.

175 Whether the spouse of the administrator accepts or renounces, during the periods provided or granted for the inventory or deliberation, he owes no rent for his occupation of the house where he remains after the death of the administrator, whether the house belongs to the community or the heirs of the deceased or is held under lease; in the last case, the spouse of the administrator does not contribute to the rent during these periods; the rent is taken out of the mass.

176 When the community is dissolved because the spouse of the administrator has died before him, his heirs may renounce within the period and in the forms prescribed by law with respect to the surviving consort, although they are not required to make an inventory for that purpose.

V - Partition of the community

177 After acceptance of the community by the spouse of the administrator or by his heirs, each consort or his heirs takes back the private property which has not become part of the community, if it exists in kind, or any property substituted for it.

Then, the mass of the community, its assets and liabilities, is liquidated.

178 A statement is prepared, for each of the consorts, of any compensation which he owes to the community or which it owes him.

179 The compensation is equal to the enrichment of one mass at the expense of the other or to the amount of the actual expense if it exceeds the enrichment.

180 The enrichment is assessed on the day the regime dissolves.

However, when the property acquired or improved has been alienated during the regime, the enrichment is assessed on the date of the alienation.

181 No compensation is due by reason of expenses incurred solely for the maintenance or preservation of property.

182 If the account discloses a balance in favour of the community, the consort pays the amount into the mass of the community.

If it discloses a balance in favour of the consort, he demands payment or pretakes common property in advance up to the total of the amount owed.

183 Pretakings are made first against the cash, then against the moveables, and subsidiarily against the immoveables of the community.

In the last two cases, the person who pretakes has a choice of the property in each category.

184 The administrator's pretakings are made after those of his spouse.

185 The administrator may make his reprises only against the property of the community.

If the community is insufficient, the spouse makes his reprises against the private property of the administrator.

186 Compensation owed by or to the community bears interest of right from the date the regime is dissolved.

187 After the pretakings have been made and the debts paid from the mass, the remainder is divided equally between the consorts or their representatives.

188 If the heirs of the spouse of the administrator are divided, so that one has accepted the community and the others have renounced, the heir who has accepted may take, from the property which falls to the lot of the spouse, only that portion which he would have had if all had accepted.

The remainder belongs to the administrator, who is still responsible, to the heirs who have renounced, for the rights which the spouse could have exercised in the event of renunciation, but only to the amount of the hereditary share of each heir who has renounced.

189 Partition of the community, with respect to form, licitation, effects, guarantees resulting from it, and the payment of balances, is subject to the rules governing partition in the Book on *Succession.*

190 A consort who has abstracted or concealed property belonging to the community forfeits his share of this property unless his spouse renounces it.

191 After the partition, if one of the consorts is the personal creditor of the other, as when the price of his property has been used to pay a personal debt of the other, or for any other purpose, he makes his claim on the share of the community allotted to his debtor or on the debtor's private property.

192 Personal claims which the consorts exercise against each other bear interest only according to the rules in the Book on *Obligations.*

193 Gifts made by one consort to the other are not taken from the community, but only from the donor's share or from his private property.

194 After the partition, each consort may be sued for the full amount of outstanding debts that are liabilities of the community attributable to him.

195 Each consort may be sued for only one-half of the debts that are liabilities of the community attributable to his spouse.

Nevertheless, he is bound only to the extent of the benefit he derives from the community.

196 Between themselves, the consorts each contribute half the debts of the community for which no compensation is owing, and half the expenses for seals, inventories, sales of moveable property, liquidation, licitation and partition.

A consort bears alone any debts which only became liabilities of the community subject to compensation by him.

197 A consort who may avail himself of the second paragraph of Article 195 only contributes to the debts of the community attributable to his spouse to the extent of the benefit he derives, unless they are debts for which he himself would have owed compensation.

198 A consort who has paid a greater portion of a debt than the amount for which he was bound under the preceding articles has no recourse against the creditor to recover the excess, unless the receipt indicates his intention to pay only to the extent of his debt.

However, he has a recourse against his spouse.

199 A consort who, by the effect of a hypothec upon an immoveable that has fallen to his share, is sued for the whole of a debt of the community, has of right recourse against the other consort or his heirs for one-half the debt.

200 The preceding articles do not preclude any clause in the partition obliging one of the consorts to pay a share of the debts other than that determined above, or even to pay all the debts, without prejudice to the rights of third parties.

201 When the community is dissolved, the heirs of the consorts exercise the same rights and are subject to the same obligations as the consorts they represent.

VI - Renunciation of the community and its effects

202 If the spouse of the administrator renounces, he may not claim any share in the property of the community, not even in the moveable property he brought into it.

203 The spouse who renounces the community takes back:

1. his private property or property that has been acquired in replacement;
2. the price of his private property that has been alienated or any money received in replacement and not invested or reinvested;
3. any compensation that may be due to him from the community.

204 The spouse who renounces is freed from any contribution to the debts of the community, with respect to both the administrator and the creditors.

He remains bound, however, by all debts personally assumed.

205 He may exercise all the rights and reprises enumerated

above against both the property of the community and the private property of the administrator.

His heirs may do the same except with regard to lodging and maintenance during the periods allowed for the inventory and deliberation.

§ - 2 Principal clauses that may modify the community of moveables and acquests

I - The community reduced to acquests

206 When the consorts stipulate that there will be only a community of acquests between them, they are deemed to exclude from the community all their property and debts existing when the regime begins, as well as those they acquire later as private property.

In this case, and after each consort has taken his duly justified contributions, the partition is restricted to the acquests made by the community.

II - The right to take back free and clear what was brought into the community

207 The spouse of the administrator may stipulate that, in the event of renunciation of the community, he may take back all or part of what he brought into it, either at the beginning of the regime or subsequently; this stipulation, however, may not extend beyond things formally specified, or to the benefit of persons other than those named.

In all cases, the contributions may be taken back only after deduction of the private debts of the spouse of the administrator which would have been paid by the community.

III - Clauses by which unequal shares in the community are assigned to the consorts

208 Consorts may depart from the equal division established

by law, by giving one of them a share less than half the community, by giving him a fixed sum, or by attributing the entire community to him.

209 In the event of unequal partition, each consort bears the debts of the community in proportion to his share in the assets.

Any agreement which obliges the consort whose share is so reduced to bear a greater share, or exempts him from bearing a share in the debts equal to what he takes from the assets, has no effect.

210 A stipulation that gives one of the consorts only a fixed sum as his share in the community is a definitive agreement obliging the consort to pay the agreed sum, whether the community is in a good or a bad position, and whether or not the community is sufficient to pay the sum.

211 If the clause establishes the definitive agreement solely with regard to the heirs of one of the consorts, that consort, if he survives, is entitled to partition by halves.

212 If the entire community is attributed to the administrator, he pays all the debts.

The creditors have no recourse against the spouse or his heirs.

213 If the entire community is attributed to the surviving spouse of the administrator, he may accept it, and remain responsible for all the debts, or renounce it and leave the property and charges to the heirs of the administrator.

214 When the consorts stipulate that the entire community will be attributed to one of them, the heirs of the other may take back from the community the contribution of the person they represent.

IV - Community by general title

215 Consorts, by their marriage contract, may establish a universal community of their property, moveable and immoveable, present and future, of all their present property alone, or of all their future property alone.

§ - 3 **Reserved property**

216 The income from the personal work of the spouse of the administrator and the moveable and immoveable property he acquires by investing that income are reserved to his administration, enjoyment and free disposal.

217 However, without the consent of the administrator, the spouse of the administrator may not hypothecate or otherwise alienate the immoveables by onerous title, or alienate or hypothecate any business concern or household furniture used by the family.

218 The spouse of the administrator may not dispose of reserved property, by gratuitous title *inter vivos*, except modest sums or customary presents, without the consent of his spouse.

219 The consent given by the administrator never has the effect of committing him personally with respect to his private property.

220 Articles 216 to 219 do not restrict the right of the spouse of the administrator to designate third parties as contingent owners or as beneficiaries of a retirement pension or other annuity, or of insurance of persons.

221 No compensation is due by reason of the sums or premiums paid out of the reserved property if the designation is in favour of the spouse or of the children of the administrator or of the spouse.

222 The creditors of the spouse of the administrator may sue for payment of their claims out of the reserved property.

The creditors of the administrator or of the community may also do so for debts contracted in the interest of the household.

223 Reserved property is included in the partition of the community.

224 If the spouse of the administrator renounces the community, he keeps the reserved property free and clear of all debts other than those for which it was liable under Article 222.

The same applies to his heirs and successors in the direct descending line.

225 If the spouse of the administrator or his heirs without distinction accept the community and the spouse of the administrator has disposed of the reserved property, even by onerous title, but in fraud of the rights of the administrator or his heirs, any reserved property so alienated or its value on the date the community is dissolved must be restored to the community.

226 Notwithstanding any agreement to the contrary, the spouse of the administrator remains subject to the obligation to contribute out of his reserved property to the expenses of the marriage, in the proportion established in Article 47.

Section IV

Separation as to property

§ - 1 Conventional separation as to property

227 The regime of conventional separation as to property is established by a simple declaration to this effect in the marriage contract.

228 Under the regime of separation as to property, each consort has the administration, enjoyment and free disposal of his moveable and immoveable property.

229 Property over which neither consort can establish his right of ownership is presumed to be held by both in undivided ownership, half by each.

§ - 2 **Judicial separation as to property**

230 Under the regime of partnership of acquests or of community, either consort may obtain separation as to property when the regime appears to be contrary to his interests or to those of the family.

231 Separation as to property judicially obtained has a retroactive effect between the consorts to the day the application was made.

232 The creditors of the consorts may not apply for separation, even with the consent of the consort who is their debtor.

233 The creditors of a consort may intervene in the action for separation to contest it.

They may also institute proceedings against separation as to property that has been pronounced or executed in fraud of their rights.

234 Dissolution of the partnership of acquests or of the community effected by separation as to bed and board or by separation as to property alone does not give rise to the rights of survivorship, unless the contrary has been stipulated in the marriage contract.

CHAPTER IX

DISSOLUTION OF MARRIAGE

235 Marriage is dissolved by:

1. the death of either consort;
2. a declaratory judgment of the death of either consort;
3. a declaratory judgment of the absence of either consort;
4. divorce.

CHAPTER X

SEPARATION AS TO BED AND BOARD, AND DIVORCE

Section I

General provision

236 In matters of separation as to bed and board, of divorce and of homologation of an agreement in the event of *de facto* separation, the court considers the condition, needs and means of the consorts, the agreements made between them, and their circumstances.

Section II

Agreements in cases of de facto separation

237 In the event of a *de facto* separation, the consorts may make agreements relating in particular to custody of the children, expenses of the marriage, and support, subject to Articles 76 and 77.

238 No such agreement is valid, however, unless attested to in writing and homologated by the court.

The court may refuse to homologate an agreement which it considers contrary to the interest of the family or of one of the parties.

239 The court may amend a homologated agreement with the consent of both parties, or on application by either party, whenever circumstances justify this.

Section III

Grounds for separation as to bed and board and for divorce

240 Separation as to bed and board or divorce is granted when a marriage breaks down.

241 A marriage is deemed to have broken down when:

1. a consort has seriously failed to execute an obligation resulting from the marriage;
2. the consorts have lived apart for at least three years immediately before the application was submitted, because one consort has decided to cease cohabitation, is incurably ill, or has been condemned to prison following a criminal offence;
3. the consorts have lived apart by mutual agreement for at least one year immediately before the application was submitted and agree to separation as to bed and board or to divorce.

242 Separation as to bed and board or divorce is granted when one consort has not known the whereabouts of his spouse for three years immediately preceding his application, and has been unable to locate him for the whole of that time.

243 Separation as to bed and board or divorce is granted, upon application by either consort, after at least one year of cohabitation, if the marriage is not consummated by reason of illness or disability.

244 Proof of marriage breakdown must be made before the court.

The admission of one party is admissible, but the court may require additional evidence.

Section IV

Conciliation

245 Before the court rules on the merits of the case in matters of separation as to bed and board or of divorce, it must ascertain that attempts at conciliation have been made in accordance with the rules of the Code of Civil Procedure.

246 The court adjourns proceedings for separation as to bed and board or for divorce until a date it indicates, if it appears that:

1. the parties may be reconciled or may conciliate their differences;
2. separation as to bed and board or divorce would be prejudicial to the conclusion of any reasonable arrangement to ensure the maintenance of the children or of either consort;
3. adjournment can avoid serious damage to either consort or to any of their children.

At the same time, the court may appoint a competent person to conciliate the parties; it may also make such interim orders as it considers useful.

247 No proceedings are terminated by reconciliation unless an agreement to that effect is signed by both parties and entered in the file.

Nevertheless, either consort may institute another action for any cause arising after the reconciliation; in this

case, he may avail himself of the previous causes in support of his new application.

248 If, in dismissing an application for separation as to bed and board or for divorce, the court considers temporary separation favourable to renewed cohabitation, it may allow the consorts to live apart for a fixed period.

It then makes any accessory orders it sees fit.

Section V

Provisional measures

249 An application for separation as to bed and board or for divorce releases the consorts from the obligation to live together.

250 The court may order either consort to leave the family residence during the proceedings.

It may also authorize either consort to retain temporarily certain household furniture which until that time had been in common use.

251 The court may decide as to the custody and education of the children, and as to visiting rights.

It determines the contribution payable by each consort to the maintenance of the children during the proceedings.

252 The court may order either consort to pay the other an appropriate amount, particularly interim support and an allowance to cover legal costs.

Section VI

Accessory measures

253 The court, in ordering separation as to bed and board or divorce, disposes of any accessory applications, particularly those respecting custody and education of the children, visiting rights, support due to the spouse, and the contribution of each consort toward maintenance of the dependent children, even those of major age.

254 The court may order that the sums granted as support to the spouse and to the children be paid to the spouse himself or to a trustee in periodic instalments which may be replaced or completed by one or more lump sums.

255 The court, on application by a consort who is separated or divorced, may also decide on similar measures after the judgment ordering separation or divorce is rendered.

256 The court, in granting a divorce or subsequently, may, according to the circumstances, declare extinguished the right of the former consorts to claim support from each other.

257 Except in the case considered in the preceding article, any provisional or accessory measures ordered by the court may be reviewed whenever any new fact so justifies.

258 Review may be made notwithstanding appeal.

If the appeal is allowed, the judgment pronouncing upon the application for review falls, subject to a new application.

Section VII

Effects of separation as to bed and board and of divorce

259 Divorce breaks the bond of marriage; divorced consorts may remarry.

260 Separation as to bed and board does not break the bond of marriage; neither consort may remarry while the other is alive.

Separation releases the consorts from the obligation to live together.

261 Divorce carries with it dissolution of the matrimonial regime; separation as to bed and board carries with it separation as to property where applicable.

262 Divorce and separation as to bed and board produce their effects on the day when the judgment is pronounced.

263 Neither divorce nor separation as to bed and board affects the rights of the children.

264 When the court grants a divorce or a separation as to bed and board, it rules on gifts where applicable.

Neither divorce nor separation as to bed and board affects any gifts *inter vivos* between consorts, unless the contract provides to the contrary.

However, the court may order payment of these gifts deferred for a period it determines.

The court may also annul or reduce any irrevocable gifts *mortis causa*, taking account of the circumstances of both parties.

265 The effects of separation as to bed and board cease upon reconciliation and reunion of the consorts.

The consorts remain separate as to property, however, unless they avail themselves of Articles 76 and following.

TITLE TWO

FILIATION

CHAPTER I

FILIATION BY BLOOD

Section I

Establishment of filiation

266 If a child is born during a marriage, or within three hundred days after the dissolution or annulment of the marriage, the husband of the child's mother is presumed to be the father.

The *de facto* consort of the mother of a child born during the *de facto* union is presumed to be the father.

267 The presumption of the husband's paternity is rebutted if the child is born more than three hundred days after the judgment ordering separation as to bed and board, unless there has been reconciliation.

268 If a child is born less than three hundred days following the dissolution or annulment of a marriage, but his mother marries again within this period, the mother's second husband is presumed the father of the child.

269 If paternity cannot be determined by applying the preceding articles, paternal filiation of a child may be established by voluntary acknowledgment of paternity or by judgment.

270 Paternity is acknowledged by a declaration made by a man that he is the father of the child.

271 Maternity is acknowledged by a declaration by a woman that she has given birth to the child.

272 Acknowledgment of paternity or of maternity constitutes proof against the person who made it.

273 Acknowledgment also constitutes proof as regards third parties if it is indicated on the act of birth or made by a person who has contributed towards the maintenance or education of the child.

Acknowledgment of paternity also constitutes proof as regards third parties if the mother declares it to be truthful; acknowledgment of maternity constitutes proof as regards third parties if consistent with the attestation of delivery or if the father declares it to be truthful.

274 Acknowledgment of paternity or of maternity has no effect if it contradicts an established filiation which has not been successfully contested in court.

Section II

Disavowal and contestation of paternity

275 The presumed father may disavow the child.

The mother may also contest the paternity of the presumed father.

276 Any means of evidence which can establish that the husband or the *de facto* consort is not the father of the child is admissible.

277 An action for disavowal or for contestation of paternity must be instituted within one year after the child is born.

However, this period begins to run against the husband or the *de facto* consort on the day when he learns of the birth.

278 The recourse is directed against the child and against the mother or the presumed father, as the case may be.

A minor is represented by an *ad hoc* tutor appointed by the court to which the case has been referred.

279 If the presumed father or the mother dies before expiry of the period for disavowal or for contestation of paternity, the right of action is not extinguished.

The heirs must exercise this right, however, within six months after the death.

280 When a child has been conceived through artificial insemination, either by the husband or the *de facto* consort, or by a third party with the consent of both consorts or both *de facto* consorts, no disavowal or contestation of paternity is admissible.

281 When a child has been conceived through artificial insemination by a third party, that party may never claim paternity of the child.

Section III

Proof of filiation

282 Paternal and maternal filiation are proven by the act of birth.

In the absence of that act, uninterrupted possession of status is sufficient.

283 Possession is established by any adequate combination of facts which indicate the relationship of filiation between the father or the mother and the child.

284 No person may claim a status contrary to that assigned

him by his act of birth and the possession of status consistent with that act.

Subject to Article 275, no person may contest the status of a person whose possession of status is consistent with his act of birth.

285 Any interested person may contest the status of a person whose possession of status is not consistent with his act of birth.

286 However, no person may contest the status of a person because that person was conceived through artificial insemination.

287 Proof of filiation may be made by testimony when there is neither an act of birth nor uninterrupted possession of status, or if the child has been registered under a false name or with no mention of the name of the mother or of the father.

Testimony is not admissible, however, unless there is a commencement of proof.

288 Any means of evidence is admissible to contest an action concerning filiation.

289 If a person unjustifiably refuses to undergo a blood test ordered by the court, the judge may draw a presumption of fact from that refusal.

290 If a child dies without establishing his status, his heirs may establish it within three years after his death.

Section IV

Effects of filiation

291 All children whose filiation is established have the same rights and obligations with regard to their father and mother and to the families of their parents.

CHAPTER II

ADOPTION

Section I

Conditions for adoption

292 No adoption may take place except in the interest of the child and on the conditions prescribed by law.

293 The following persons may adopt:

1. consorts living together;
2. the spouse of the child's father or mother;
3. consorts separate as to bed and board, consorts separated *de facto*, or divorced consorts, provided they had adopted the child *de facto* before the separation or divorce;
4. any other person of major age.

294 If one of the persons adopting dies after the motion for adoption is presented, the hearing may be continued and the adoption granted.

295 If the person adopting is widowed and it is clearly established that his deceased spouse had intended to adopt a child, the court may grant adoption with regard to the person adopting and his deceased spouse.

296 A person adopting must be at least eighteen years older than the person adopted, unless the person adopted is the child of the spouse of the adopting parent.

The court may dispense with this requirement, however, in the interest of the child.

297 A minor may be adopted if:

1. his parents have consented to the adoption or
2. he has been judicially declared eligible for adoption.

298 The father and the mother must both consent to the adoption if the filiation of the child is established with regard to both of them.

If either parent is deceased, is unable to express his will, or is deprived of parental authority, the consent of the other parent is sufficient.

299 If the filiation of the child is established with regard to only one of his parents, that parent alone consents to the adoption.

300 The tutor to the person may consent to the adoption of the child if neither of the child's parents is in a position to do so.

301 Neither the parents nor the tutor of a child may consent to his adoption, except after consultation with, and in the presence of, a professional duly authorized for the purpose by a social service centre.

During the interview, the professional must give the father, mother or tutor, as the case may be, a form of the kind provided for in the schedule, explaining his or her rights.

302 Consent to adoption entails delegation of parental

authority to the social service centre or to the person to whom a child is given to be placed for adoption, as the case may be.

303 The father, mother or tutor may withdraw his or her consent to adoption within thirty days following the date when the consent was given.

The withdrawal is made in writing and addressed to the social service centre or to the person to whom the child has been given to be placed for adoption.

The child must then be returned without formality or delay to the person who made the withdrawal.

304 If a child is returned to either of his parents or to his tutor, even after the thirty days expire, his return is equivalent to withdrawal of consent.

305 The father, mother or tutor who has not withdrawn consent within thirty days may apply to the court, within ninety days after the consent to adoption, to have the child returned. This time period is compulsory.

306 The court in particular may authorize conditional return of the child to either of his parents or to his tutor for a period determined by it.

In this case, it orders a social service centre to ensure supervision of the child, and when the fixed period expires, the return becomes final, unless the report is unfavourable.

307 The following may be declared eligible for adoption:

1. a child whose paternal filiation and maternal filiation have not been established within three months after his birth;
2. a child who has neither a father nor a mother;
3. a child whose care, maintenance or education has not in

fact been assumed by either his father or his mother for more than six months;

4. a child whose father or mother, in the opinion of a psychiatrist appointed by the court, suffers from a mental illness which renders that parent unfit to take care of the child, and whose other parent does not in fact assume his care, maintenance or education;

5. a child whose father and mother have been deprived of parental authority.

308 No application for a declaration of eligibility for adoption may be made except by the social service centre or by any person who has received the child.

309 Withdrawal of consent to adoption does not constitute grounds for irreceivability of an application for a declaration of eligibility for adoption if either parent or the tutor has not in fact resumed charge of the child.

310 Before declaring a child eligible for adoption, the court ascertains that it is unlikely that the child's father, mother or tutor will resume custody of him and assume his care, maintenance or education.

311 When declaring a child eligible for adoption, the court confers parental authority on the social service centre or on the person entrusted with custody of the child.

312 No person of major age may be adopted except by the persons who had adopted him *de facto* when he was a minor.

The court, however, may dispense with this requirement in exceptional cases.

313 If the child is ten years old, adoption may not take place without his consent, unless he is unaware of his *de facto* adoption and his usual behaviour towards the person adopting may be interpreted by the court as tacit consent.

However, when a child less than fourteen years old refuses to give his consent, the court may defer adoption for a period of time which it indicates, or grant adoption notwithstanding the refusal.

314 Refusal by a child fourteen years old is a bar to adoption.

315 The consent provided for in the preceding articles must be in writing.

It is valid even when the person who gives it is not of major age.

Section II

Placement for adoption and judgments

316 A child whose parents or tutor have consented to his adoption, or who has been judicially declared eligible for adoption is placed for adoption when he is in fact entrusted to a person who wishes and is authorized by law to adopt him.

317 Any person other than a social service centre who places a child for adoption must, within ten days after the child is so placed, advise the social service centre at the place where that person has his domicile, and the Minister of Social Affairs.

318 Subject to Articles 303 and 305, no child may be returned to his original family once he has been placed for adoption.

Likewise, filial relationship may not be established between a child placed for adoption and his parents by blood.

319 If placement for adoption terminates, or if the court refuses to grant the adoption, the effects of the placement cease.

320 As long as a child is placed for adoption, he is under the supervision of the social service centre.

321 Adoption of a minor may not be granted unless he has lived with the person adopting for at least six months immediately preceding presentation of the motion, and unless a written report from a social service centre has been filed.

The report contains an assessment of the qualifications and aptitudes required of the person adopting to raise the child suitably, and of the manner in which the child has been treated by the person adopting and by that person's family.

The court may require any other evidence it deems necessary.

Section III

Effects of adoption

322 Adoption has effect from the date of the final judgment granting it.

323 In the case provided for in Article 294, the adoption has effect upon presentation of the motion.

324 Adoption confers on the adopted person a filiation which replaces his original filiation.

The person adopted ceases to belong to his original family, subject to any impediments to marriage.

325 Adoption creates, between the person adopting and the adopted person, the same rights and obligations as exist between parents and their children.

An adopted person also has the same rights and obligations with regard to the family of the person adopting as a child whose filiation is established.

326 Where a child is adopted by the spouse of his father or of his mother, the court, where applicable, may decide that the child will retain his successoral rights in his original family.

327 In the same cases, the court may grant visiting rights to members of the original family if it finds this favourable to the interest of the child.

The court may amend this measure at any time.

328 Adoption by the spouse of the father or mother of a child does not break the bond of filiation established between the adopted person and the parent whose spouse is the person adopting.

329 Subject to Articles 326, 327 and 328, the parents, tutor or guardian of the adopted person lose their rights and are discharged from their duties established by law regarding that person, save, where applicable, the obligation to render account.

330 When a second application for adoption is granted, the effects of the preceding adoption terminate, save with respect to acquired rights.

Section IV

Confidentiality, offences, and penalties

331 All court files, records of social service centres, and documents respecting adoption sent to the Minister of Social Affairs or the Public Curator are confidential, notwithstanding any law to the contrary.

332 No person may have access to or obtain extracts from them unless, upon motion by a person who establishes an interest compatible with the best interest of the adopted person, the court which rendered the judgment of adoption

authorizes that person to do so in a written judgment deposited in the files.

333 A person who knowingly infringes any provision of this section respecting the confidential nature of any proceedings or of any record of adoption, or violates the secrecy of the proceedings or record, is guilty of an offence and liable, on summary conviction, in addition to payment of the costs, to a fine not exceeding one thousand dollars or to imprisonment for not more than one year, or to both penalties together.

334 A person who gives or receives, or agrees to give or receive, directly or indirectly, any payment, benefit or reward for the adoption of a child, or with a view to procuring a child for any person or to assisting in placing a child for adoption, is guilty of an offence and liable, on summary conviction, in addition to payment of the costs, to a fine not exceeding two thousand five hundred dollars, or to imprisonment for not more than two years, or to both penalties together.

The preceding paragraph does not apply to contributions made to a social service centre.

This article does not apply when a person related to a child pays or agrees to pay sums of money for the care, maintenance or education of the child to the person adopting or to any person with whom the child is placed for adoption.

335 A person who places a child for adoption and fails to give the Minister of Social Affairs or the social service centre the notice provided for in Article 317 is guilty of an offence and liable, on summary conviction, in addition to payment of the costs, to a fine not exceeding two hundred dollars.

TITLE THREE

THE OBLIGATION OF SUPPORT

336 An obligation of support exists between:

1. consorts;
2. relatives in the direct line.

337 Divorced consorts and persons whose marriage has been annulled owe each other support, unless the court decides otherwise.

338 *De facto* consorts owe each other support as long as they live together.

However, if exceptional circumstances justify it, the court may order a *de facto* consort to pay support to his spouse once they no longer live together.

339 Proceedings for the support of a minor may be instituted by his father, mother or tutor, or by any person or institution who or which has custody of him.

340 Support is awarded in proportion to the needs of the person who claims it and the means of the person who owes it.

After the plaintiff proves the extent of his needs, the defendant bears the burden of proving that he is unable to meet them.

341 The court may award provisional support for the duration of the proceedings to the person entitled to it.

342 Support is payable in periodic instalments which may be replaced or completed by one or more lump sums, on conditions which the judge deems reasonable, having regard to the circumstances.

343 The court may order a person who owes support to furnish security, beyond the judicial hypothec, for payment of that support.

Notwithstanding Article 368 of the Book on *Property*, it may also order that any property of the person who owes support be affected by the judicial hypothec, and appoint a person to be put in possession of the property.

344 If the debtor offers to take the person entitled to support into his home, he may be dispensed from paying all or a part of the support, if circumstances so justify.

345 The creditor may exercise his recourse against one of the debtors or against several of them simultaneously.

The debtor who has not been sued may be impleaded.

346 The court fixes the amount of support to be paid by each of the debtors, taking account of the circumstances.

The debtor who has been ordered to pay has a recourse against a debtor who has not been impleaded.

347 Support awarded by judgment may be reviewed whenever circumstances so justify.

The review may be made notwithstanding appeal; if the appeal is allowed, the judgment pronouncing upon the application for review falls, subject to a new application.

348 Support cannot be transferred or seized, except as regards debts for support.

It may be seized, however, by any person who has provided the recipient of the support with the necessities of life or has paid debts for support on behalf of the recipient.

349 Support may be claimed only for the twelve months preceding the application.

Arrears of support granted by judgment are prescribed by three years.

The debtor from whom these arrears are claimed may plead a change in his condition or in that of his creditor after judgment.

TITLE FOUR

PARENTAL AUTHORITY

350 Every child is subject to the authority of his parents until he becomes of age.

351 Authority is vested in parents so that they may execute their obligations towards their children.

352 Every child, regardless of his age, owes respect to his parents.

353 Parents have the rights and duties of custody, supervision and education of their children.

They must maintain their children.

They represent them in all civil acts.

354 Parents exercise parental authority together, unless it has been judicially attributed to one of them.

If either parent dies, or if for any reason he is not able to express his will, the other parent exercises the authority.

355 A parent who performs alone an act of authority concerning the person of a child is presumed, with regard to third parties in good faith, to be acting with the consent of the other parent.

356 Parents may entrust other persons with the custody, education or supervision of their children, subject to the parents' right to resume it at any time.

357 Either parent may refer to the court any question relating to the exercise of parental authority.

The court then orders any measures it deems appropriate.

358 Parents may not disrupt any personal relationship between their child and his grandparents, except for serious reasons.

In the absence of agreement between the parties, these relationships are determined by the court.

In exceptional circumstances, the court may grant correspondence rights or visiting rights to other persons, whether or not they are related.

359 A parent who is found guilty of a criminal offence against the child's person, who seriously neglects his duties towards the child, or who manifestly misuses his authority, may be deprived of all or part of his parental authority.

360 A child alone, or any interested person including the Minister of Justice, may submit a motion for deprivation or withdrawal.

The motion must be served on both parents.

361 Deprivation entails for either parent loss of the right to parental authority and, for the child, exemption from the obligation to provide support.

It extends to all minor children already born at the time of the judgment, unless the court decides otherwise.

362 The court which orders deprivation appoints a person to exercise parental authority.

363 In lieu of deprivation, the court may order partial withdrawal of the rights derived from parental authority.

It appoints a person to exercise these rights, if necessary.

364 Withdrawal entails partial loss of the right to parental authority; the loss is restricted to the attributes specified by the court.

The father or the mother retains authority over the child and exercises the attributes of that authority consistent with the application of the measure ordered by the court.

Withdrawal affects only the child with respect to whom the application is made.

365 The child retains all his rights with regard to that parent who has been deprived of authority or whose rights have been withdrawn.

366 A parent who has been deprived of his rights, or some of whose rights have been withdrawn, may have all or some of the rights which had been withdrawn from him restored, provided he alleges new circumstances, subject to the provisions governing adoption.

367 If the health, safety or development of a child is in danger, or if the conditions of his education are seriously compromised, the court, either *proprio motu* or on a motion submitted by the child alone or by any interested person including the Minister of Justice, may order all protective measures deemed appropriate, even during the proceedings.

368 The court must keep the child in his family home, to the extent that this is possible.

If the child must be removed from his home, the court may entrust him to the parent who did not have custody of him, to a member of the family, to a trustworthy third party, to a foster home, or to a reception centre.

369 Whenever any protective measure is taken with regard to a child, the court appoints a qualified person or an appropriate service to assist and advise the family of the child

and, where applicable, the person entrusted with him and to follow his development, and to submit periodic reports to the court.

370 The court, at any time, either *proprio motu* or on a motion by the child alone or by any interested person including the Minister of Justice, may amend or revoke any judicial decision concerning the person of a child.

BOOK THREE

SUCCESSION

TITLE ONE

PROVISIONS COMMON TO EVERY SUCCESSION

CHAPTER I

GENERAL PROVISIONS

1 A succession devolves by death alone.

2 A succession devolves at the domicile of the deceased.

3 An heir is a person to whom an intestate or a testamentary succession devolves.

A testamentary heir is also called a legatee; an heir to an intestate succession is also called a legal heir.

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

All the property constitutes a single inheritance which is transmitted and divided according to the same rules or as directed by the deceased.

CHAPTER II

QUALITIES REQUIRED TO INHERIT

5 Only persons who it is certain exist at the time the succession devolves may inherit.

6 When several persons entitled to inherit from each other die and it is not possible to determine which one survived the other or others, they are deemed to have died simultaneously.

The succession of each devolves to those heirs who

would have been entitled to receive it in place of the persons who so died.

7 The following persons are unworthy of inheriting, and, as such, are excluded from the succession:

1. a person found guilty of making an attempt on the life of the deceased;
2. a person found guilty of cruelty, injury or serious offence with regard to the deceased;
3. a person who has concealed, altered or destroyed the will of the deceased without the testator's knowledge;
4. a person who has hindered the deceased in the writing, amendment or revocation of his will;
5. a person deprived of parental authority over his child, with respect to that child's succession.

8 Only an heir who has an interest may invoke the unworthiness of another heir.

9 The demand must be made within one year after the death or within one year from the day when the plaintiff heir could have become aware of the cause of unworthiness.

10 Unworthiness cannot be invoked against an heir who benefits from a will made by the deceased, if he knew the cause of the unworthiness and the identity of the unworthy person.

11 An unworthy heir who has received property from a succession is considered an apparent heir and deemed a possessor in bad faith.

12 Descendants of an unworthy heir are not excluded from the succession by reason of the fault of the heir.

13 Consorts do not inherit from each other if they are separate as to bed and board and have not been reconciled, or

if they are divorced, unless otherwise provided in a subsequent will.

14 A consort in good faith inherits from his spouse if the marriage is annulled after the death of the spouse.

CHAPTER III

TRANSMISSION OF SUCCESSION

15 When an heir under an intestate succession inherits, he is seized of right of the property of the deceased, subject to the provisions regarding administration of successions.

He is responsible for the debts and charges, in accordance with Title Two.

16 The Crown in right of the province is not seized of right, but must be put in possession judicially.

17 Legatees by any title are also seized, by the death of the testator or by the event which gives effect to the legacy, of the property bequeathed, in the condition in which it then is, along with all necessary accessories which are part of it, or of the right to obtain payment of and to institute any action resulting from the legacy, without being obliged to obtain legal delivery.

They have possession thereof, subject to the testamentary provisions regarding administration of the succession.

18 A petition to inherit is subject to a twenty-five-year prescription, from the opening of the succession, unless the heir is deprived of his right to inherit before that period expires.

19 An apparent heir must return to the true heir everything he has received from the succession.

20 Acts of administration, and acts of alienation by onerous title to the benefit of a third party in good faith, performed by an apparent heir, may be set up against the true heir.

Subject to the rules governing publication of immoveable rights, acts of alienation by gratuitous title performed by an apparent heir may not be set up against the true heir.

21 An apparent heir in good faith must restore to the true heir only the price he has received from the alienation, or the property acquired through reinvestment of the price.

22 An apparent heir in bad faith must pay the true heir the value, at the time the judgment is rendered, of the property alienated; he is also responsible for damages, where applicable.

TITLE TWO

INTESTATE SUCCESSION

CHAPTER I

DEVOLUTION OF SUCCESSIONS

23 There are two kinds of intestate succession: regular successions, which devolve by law to a spouse and to relatives, and irregular successions, which, in the absence of a spouse and of relatives, devolve to the Crown in right of the province.

Section I

Regular succession

24 Regular successions devolve to the spouse, descendants, ascendants and collaterals of the deceased, in the order and according to the rules determined below.

25 Successions devolve to relations by reason of ties of blood or of adoption, whether or not these ties result from a marriage.

26 Proximity of relationship is established by the number of generations.

27 Each generation forms one degree.

The succession of degrees forms the line.

28 The direct line is the succession of degrees between persons who descend one from another.

The collateral line is the succession of degrees between persons who do not descend one from another, but who descend from a common ancestor.

29 The direct descending line connects a person with his descendants; the direct ascending line connects him with his ancestors.

30 In the direct line, the number of degrees is equal to the number of generations between the heir and the deceased.

31 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.

Section II

Representation

32 Representation is a fiction of law the effect of which is to attribute to a representative the place, degree and rights of the person represented.

33 There is no limit to representation in the direct descending line.

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

34 Representation does not take place in favour of ascendants; the nearest in each line excludes the more distant.

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

36 Representation takes place when the person represented has died previously or simultaneously, when he is unworthy, or when he has been declared absent.

37 No person who has renounced a succession may be represented, but he may represent the person whose succession he has renounced.

38 In all cases where representation is accepted, partition is effected by roots.

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

39 In addition to what he must return, the representative must return to the succession of the deceased that which the person represented would have had to return, even if he renounced the succession of the represented person.

Section III

Order of devolution of succession

40 When there is no issue, a consort inherits alone from his spouse, even if the spouse is a minor.

41 When a deceased leaves descendants, the succession devolves to his spouse, who may opt to inherit the ownership of half the succession or the usufruct of all of it.

The descendants inherit the remainder.

42 *De facto* consorts inherit from each other in the same way as married consorts, even if the deceased has descendants, but without a reserve share.

However, *de facto* consorts do not inherit from one another when one of them has a spouse who can inherit.

43 If there is no spouse, the children or their descendants inherit alone from their ascendants.

44 Descendants who are all of the same degree and in their own right inherit in equal portions and by heads.

When all or some of them come by representation, they inherit by roots.

45 If there are no spouse and surviving issue, half of the succession devolves to the parents of the deceased or to his surviving parent, and the other half devolves to his brothers and sisters or to their descendants.

46 If there are no spouse, descendants and brothers and sisters or their descendants, the entire succession devolves to the parents of the deceased, or to the surviving parent.

47 Parents inheriting from their deceased children share equally.

If only one of them inherits, he also receives the share which would have devolved to the other.

48 When there are no spouse, issue or parents, the entire succession devolves to the brothers and sisters of the deceased, or to their descendants.

49 The share which devolves to the brothers and sisters is divided among them equally, provided they are all born of the same union.

If they are born of different unions, the portion is divided in half 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 each in his own line.

If the brothers and sisters or their descendants are in one line only, they inherit the entire succession to the exclusion of all relations in the other line.

50 When there are no spouse, issue, parents, brothers or sisters or their descendants, one-half of the succession devolves to the other ascendants and one-half devolves to the other collaterals.

When there are no ascendants, the other collaterals inherit the entire succession.

When there are no collaterals, the other ascendants inherit the entire succession.

51 The share devolving to the ascendants of the deceased, other than his parents, is divided in half between the ascendants in the paternal line and those in the maternal line.

The ascendant most closely related takes the portion accruing to his line, to the exclusion of all others.

Ascendants of the same degree succeed by heads in the same line.

52 The share which devolves to the collaterals other than the brothers and sisters and their descendants is divided in half between the closest collaterals in the paternal line and those in the maternal line.

53 Among these collaterals, the closest in each line excludes all the others.

Those who are of the same degree share by heads.

54 If there are no relations within the degree qualified to inherit in one line, the relations in the other line inherit the entire succession, whether they are ascendants or collaterals.

55 Relations beyond the twelfth degree do not inherit.

Section IV

Irregular succession

56 If there are no spouse and no relations within the degree qualified to inherit, the Crown in right of the province inherits the succession.

The Crown is only liable for debts not exceeding the assets of the succession.

57 The Crown obtains possession in the manner prescribed in the Code of Civil Procedure.

58 When the prescribed rules and formalities have not been complied with, the regular heirs, if any appear, may claim the property, or damages.

CHAPTER II

THE SPOUSE'S RESERVED SHARE

Section I

Attribution of the reserve

59 A spouse by marriage is entitled to a reserve upon inheriting.

The reserve, which constitutes a successoral right, is a share, as determined below, of the mass established in accordance with Articles 65 and 66.

Any derogatory provision is without effect, unless contained in a marriage contract.

60 When the deceased leaves no children, the reserve is one-half in ownership.

When he leaves children, the reserve is one-quarter in ownership.

61 A spouse with a reserve may not demand payment of the reserve in kind, except in the case provided for in Article 194.

62 The reserve of the spouse may be replaced by the legacy of a life usufruct, or of the exclusive benefit of a trust of the entire mass, as determined according to Articles 65 and 66, in his favour, if the deceased leaves no children, or of half of the mass, if he leaves children, provided there are no conditions attached to the legacy.

Section II

Disposable portion and reduction of gifts and legacies

63 Liberalities made by the deceased, either *inter vivos* during the three years preceding his death or *mortis causa*, which affect the reserve, may be reduced at the time the succession devolves, according to the conditions and in the manner determined below.

The same applies to gifts whose term is the death of the donor, even if they are made more than three years before the death.

64 Only the spouse with a reserve, or his heirs, may apply for reduction.

The creditors of the deceased may not apply for such a reduction or benefit from it.

65 To determine whether a reduction is applicable, a mass is formed of all the property of the succession.

Once the debts are deducted, the property which has been disposed of by gift under Article 63 is fictitiously added

to the mass, according to its condition at the time of the gift and its value at the time of the death.

The amount which could have been disposed of by the deceased is calculated out of the whole.

66 A liberality in usufruct, in trust or as a life annuity is counted in terms of its capital value at the time of the death.

Money payable under a retirement pension or other annuity or under a contract of insurance of persons is also included in the mass if it would have been included in it had no contingent owner or beneficiary been designated in the three years preceding the death.

67 Unless they have been manifestly exaggerated with regard to the means of the disposer, the cost of food, maintenance, education and apprenticeship, the usual installation expenses, wedding costs and customary presents are not included in the mass described in Articles 65 and 66.

68 An alienation made with no obligation to repay, or with a reserve of usufruct, benefiting a descendant, is presumed to be a gift.

A spouse with a reserve who has consented to the alienation may not apply to have it reduced.

69 An alienation, hypothec or charge granted by the deceased in return for a counterpart out of proportion with the value of the property at the time of the grant is presumed to be a gift, insofar as the value exceeds the price actually paid.

70 Gifts *inter vivos* are reduced only when the value of all the property included in testamentary dispositions has been exhausted. If such a reduction is applicable, it is made beginning with the most recent gift, going from the most recent to the first.

Money exigible by a designated beneficiary under an insurance contract is deemed a legacy for the purposes of establishing the order and mode of reduction.

71 When the value of the gifts *inter vivos* exceeds or is equal to the disposable portion, the legatees cannot receive their legacies.

72 When the testamentary liberalities exceed either the disposable portion or that part of the portion remaining after the value of the gifts *inter vivos* is deducted, the legacies are reduced *pro rata*, unless the testator has provided to the contrary, without distinction between universal legacies and particular legacies, nor, with regard to particular legacies, between legacies of sums of money and legacies of specific things.

73 The testator may determine, in particular, an order of preference for payment of the legacies, or prescribe the order or proportion of the reduction.

74 Reduction of gifts *inter vivos* may not be claimed in kind.

It applies only to the value of the property given which exceeds the disposable portion.

75 Any excess must be paid at the time of partition.

However, if the object of the gift is an immoveable, or a professional, commercial, industrial or other entreprise, a term may be granted for payment of all or part of the amount due, in accordance with the conditions determined in Article 199.

The same applies if the gift concerns household furniture which has been used by both the deceased and the donee.

76 The sum which the donee must pay in order to fulfil the reserve bears interest from the time of the death.

Section III

Imputation of liberalities made to spouses

77 A legacy made to a spouse with a reserve is deducted from the reserve.

The spouse must also deduct from his reserve any gifts *mortis causa* made by marriage contract, and any money payable to him under insurance contracts entered into by the deceased.

78 A gift stipulated to be an advance on the inheritance of a spouse with a reserve is deducted from his reserve.

A gift made to a spouse with a reserve, with a stipulation that it is not to be included in his share of the succession, is not deducted from his reserve unless it was made within three years preceding the death.

CHAPTER III

CONTINUATION OF THE OBLIGATION OF SUPPORT

79 The persons to whom the deceased owed support may claim support from their debtor's succession, even though they may be heirs and even though the right to support had not actually been exercised before the death.

80 Support must on pain of forfeiture be claimed within six months after the death.

81 Support is paid only out of the net assets of the succession, after the reserve is deducted

82 The provisions of the [redacted]

the obligation of support apply as far as possible to the obligation of support governed by this chapter.

CHAPTER IV

ACCEPTANCE AND RENUNCIATION OF SUCCESSION

Section I

The right of option and the prior right to take inventory and to deliberate

83 No one is bound to accept a succession which devolves to him.

84 Any succession may be accepted either purely and simply or with benefit of inventory.

85 The succession which devolves to a person under tutorship may be accepted by the tutor only with benefit of inventory unless the succession obviously shows a deficit, in which case he may renounce.

86 Acceptance or renunciation prior to the time the succession devolves has no effect, unless made in a marriage contract.

87 The heir may not be compelled to make a decision until six months from the time the succession devolves to him.

No judgment may be obtained against the heir as such during this period, unless he has made his acceptance evident.

88 Even after the expiry of the period determined in the preceding article, the heir retains the right either to accept with benefit of inventory or to renounce, provided he has not performed any act entailing his pure and simple acceptance,

or provided no judgment having the force of *res judicata* has been rendered against him as a pure and simple heir.

89 After the expiry of the period provided in Article 87, and on proceedings instituted by any interested person, a judgment may be rendered against the heir as a pure and simple heir, unless the court grants him an additional period.

An heir who has neither renounced nor accepted with benefit of inventory before the expiry of the period granted him by the court is deemed to have accepted the succession purely and simply.

90 When a spouse is deemed to have accepted a succession, and descendants are involved, he may claim only a share in ownership.

91 If the heir has not been sued and has neither accepted nor renounced within five years from the day he became aware of his right to inherit, he is deemed to have renounced his right to inherit.

92 Whenever the person to whom a succession devolves dies without having made a decision, his heirs may exercise the option in his stead.

Each heir exercises his right of option separately with regard to his share.

To do so, the heirs have a new six-month period beginning when their predecessor dies.

93 Acceptance or renunciation may be impugned by the heir on the grounds provided in the Book on *Obligations*, particularly if a will is discovered which was unknown when the heir made his choice.

94 When an heir accepts a succession with benefit of inventory, or renounces, within the period provided in Article

87, the lawful expenses incurred before the acceptance or renunciation are borne by the succession.

When the acceptance with benefit of inventory, or the renunciation, takes place only after the period expires, the court may decide that those expenses will also be chargeable to the succession.

95 Any interested person may apply to the court to have seals affixed, an inventory made, a sequestrator appointed, or any other order rendered which is necessary to preserve his rights.

96 Conservatory measures benefit all the creditors and heirs of the deceased and create no right of preference among them.

Saving the case provided for in Article 131, when the moveable property of the succession has been the object either of conservatory measures or of seizures or other measures of execution, no payment may be made out of the moveable property to the creditors and legatees of the deceased before the expiry of three months from the day the measure was ordered.

In the event of alienation of moveable property, the right of the creditors and legatees may be exercised against the price as long as it remains unpaid.

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

The same applies to costs of security to be furnished by the beneficiary heir, when so ordered unless he is guilty of a fault.

98 Any heir or creditor may consult the inventory and may obtain a copy of it at his own expense.

99 Letters of verification may be obtained whenever an intestate succession devolves in Québec and includes property situated elsewhere, or debts due by persons not residing in Québec.

The procedure in such a case is governed by the Code of Civil Procedure.

Section II

Pure and simple acceptance

100 Acceptance renders irrevocable the transmission of a succession which takes place of right at the time of death.

101 Acceptance is express or tacit.

102 Acts respecting custody of the property of a succession, and particularly payment of funeral expenses and of the costs incurred during the final illness, do not alone entail acceptance of the succession.

Acts rendered necessary by exceptional circumstances, which the heir has performed in the interest of the succession, do not entail acceptance.

103 If a succession includes moveable property that is perishable or costly to preserve, the heir may sell it by mutual agreement, and no acceptance on his part may be inferred.

104 An heir 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:

1. renunciation, even by gratuitous title, in favour of one or more of his coheirs;

2. renunciation, even in favour of all his coheirs without distinction, when he receives payment for his renunciation.

105 An heir who has abstracted or concealed property of a succession and, in particular, who knowingly and in bad faith has failed to include the property in the inventory, is deemed a pure and simple heir, notwithstanding any renunciation or acceptance with benefit of inventory, without prejudice to the penalties and recourses provided in this Code.

106 An heir who claims to have relieved the administrator of the succession or the testamentary executor of his obligation to make inventory is *ipso facto* deemed to have accepted the succession.

Section III

Renunciation

107 An heir who has not accepted a succession may renounce it.

108 Except in the case provided for in Article 91, renunciation of a succession may not be presumed.

109 Renunciation is effected by notarial deed *en minute* or by a judicial declaration which is recorded by the court.

110 An heir who renounces is deemed never to have been an heir.

The succession devolves as if the person renouncing had never existed.

111 If the person renouncing is the sole heir in his degree or if all coheirs renounce, their descendants come in their own right and inherit by heads.

112 Until the term in Article 91 expires, an heir who has renounced a succession may still accept it, unless it has already been accepted by another person entitled to it.

Acceptance is made by notarial deed *en minute* or by judicial declaration, which is recorded by the court.

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.

113 If a person renounces to the prejudice of the rights of his creditors, the court may authorize them to accept the succession in the place of their debtor.

The creditors may also be authorized to accept the succession if their debtor has fraudulently allowed the term specified in Article 91 to expire.

In both cases, their action must be instituted within three years following the renunciation, or following expiry of the term provided for in Article 91.

114 The acceptance has effect only in favour of creditors who have applied for it, and only up to the amount of their claims.

It has no effect in favour of the heir who has renounced.

Section IV

Acceptance with benefit of inventory

115 Acceptance with benefit of inventory is made by notarial deed *en minute*.

116 An heir who accepts with benefit of inventory is never excluded by one who offers to accept purely and simply.

117 An heir forfeits the benefit of inventory if he confounds the property of the succession with his own, except to the extent that they were already confounded before the death, as in the case of cohabitation.

118 An inventory of the property of the succession must be made before or after acceptance with benefit of inventory.

119 The beneficiary heir who has not already done so must make an inventory within two months of his acceptance, unless the court grants him another term; failing this, he is deemed to have accepted purely and simply.

120 The inventory must include a faithful and accurate list of all property of the succession, subject to the following reservations:

1. the personal effects, clothing, furniture and other objects in current use by the deceased need not be listed or described individually, unless they include items whose fair market value at the time of death exceeds one thousand dollars; these must be listed individually;

2. universalities, such as commercial and other enterprises, their accessories and the rights attached to them are validly described if the reference made is sufficient for a bulk sale, provided, however, that each immoveable is identified individually.

121 Notice of closure of the inventory must be registered where the succession devolved.

It must indicate the place where interested persons may consult the inventory.

122 The beneficiary heir is not bound to provide security, unless the court so orders on motion by any interested person, who must establish the need for such a measure.

If the security so ordered is not provided, the court, according to the circumstances, may order that the heir forfeit

the benefit of inventory or that he be deprived of the custody and administration of the property of the succession.

The court may also make any appropriate order in deciding upon the motion.

123 The effect of benefit of inventory is to give the heir the advantage of:

1. not confounding his personal property with that of the succession, and retaining the right to demand payment of his claims against the succession;
2. being held liable for the debts of the succession only out of the property he has received.

Apart from the cases mentioned in Articles 143 and 144, the creditors of the deceased have no action against the personal property of the heir.

124 The beneficiary heir administers the succession.

In this respect, subject to this section, he has the rights and obligations of an administrator of the property of another entrusted with simple administration.

He is accountable for his administration to the creditors and to his coheirs.

125 The beneficiary heir realizes the property of the succession to the extent necessary to discharge the claims and the legacies.

126 Before the beneficiary heir disposes of the property of the succession, he must make his quality known by a public notice, in accordance with Article 920a of the Code of Civil Procedure.

This notice is sent to those heirs and creditors of the succession whose existence is known to the beneficiary heir.

127 The beneficiary heir may not make any payment to the creditors or legatees before the expiry of two months following the notice.

128 Except in the cases mentioned in Article 103, a beneficiary heir who disposes of moveable property must proceed in the manner prescribed by Articles 921 and 922 of the Code of Civil Procedure.

If he produces the property in kind, he is liable only for the depreciation or deterioration caused by his negligence.

129 The beneficiary heir may not alienate immoveable property except in case of need or of obvious advantage.

He must then proceed in the manner prescribed by Articles 922a to 922f of the Code of Civil Procedure.

130 A beneficiary heir of major age who has alienated property of the succession without complying with the requirements of Articles 126 to 129 forfeits the benefit of inventory.

131 If after two months creditors or legatees have made themselves known to the heir, or there are any actions, seizures or contestations by or between the creditors and the legatees, the heir may make payments only in the order and in the manner prescribed by the court, unless there is agreement among all interested parties.

132 If after two months no creditors or legatees have made themselves known to the heir, and no action, seizure or contestation has been judicially brought against him, the beneficiary heir may pay the creditors and legatees as they present themselves.

133 Without prejudice to their action in damages against the heir, the creditors who have made themselves known and have

been neglected in the settlement have recourse against the creditors and legatees paid to their detriment.

Legatees who have been neglected under the same circumstances have recourse against the other legatees.

134 Creditors and legatees who do not present themselves until after payments have been regularly made in accordance with Articles 126, 127, 131 to 133, have action only against the remainder of the succession.

Nevertheless, creditors have recourse against any legatee who has been paid to their detriment, unless the legatee proves that they might have been paid by using diligence, without his being left answerable toward the other creditors who received in lieu of the claimant.

135 A beneficiary heir who has an action to bring against the succession must give notice of this in writing to the Public Curator who, for this purpose, acts *ex officio* as curator to the succession.

136 The beneficiary heir must impute the amount of the hypothecary claims to the sale price of immoveable property and remit it to the hypothecary creditors, unless the alienation is made subject to a hypothec with the consent of the creditor.

137 The beneficiary heir, at any time and with the consent of all the interested parties, may render an amicable account without judicial formalities.

138 If he administers for more than one year, the beneficiary heir must make his annual summary account available to the heirs and creditors who have not been paid.

139 If the account is contested, the beneficiary heir renders a judicial account and gives any notice required by the court.

The court discharges him of his administration according to the terms it deems appropriate in the circumstances.

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

141 In return for the discharge which he obtains from the court or from all interested persons the beneficiary heir may retain in kind that property of the succession which remains in his hands.

142 If the discharge is based on payment by the beneficiary heir of all the debts, and he has not paid out all that he has received, he is not discharged with respect to any creditors who present themselves within six months of the discharge and give a satisfactory reason for not presenting themselves within the required period.

After the period of six months, the creditors forfeit their rights against the beneficiary heir.

143 Once the account has been audited, the beneficiary heir cannot be compelled to pay out of his private property, except to the extent of the amount which remains in his hands.

144 If the beneficiary heir has been put in default to submit his final account and does not meet that obligation, he must pay out of his personal property.

145 The form and content of the account which the beneficiary heir must render are governed by the Code of Civil Procedure.

146 Any interested party may have the beneficiary heir replaced by an administrator, if the interests of the creditors or of the legatees are in danger of being compromised by the beneficiary heir.

The administrator is appointed, on motion, by the court of the place where the succession devolved.

147 The beneficiary heir may also absolve himself of the duty of administering and winding up the succession by having an administrator appointed in the manner provided in chapter V of this Title.

148 Unless the court orders to the contrary, the administrator appointed in the circumstances provided for in Articles 146 and 147 has the same powers over the property of the succession as does the beneficiary heir, and is bound by the same obligations.

He must render an account of his administration in the same manner as the beneficiary heir.

Section V

Vacant successions

149 A succession is presumed vacant if all the known heirs have renounced it, or if no heir has claimed it after six months following the period during which the first heirs called may exercise their option.

150 A declaration that a succession is vacant is obtained in the manner prescribed by the Code of Civil Procedure.

151 The Public Curator is *ex officio* curator to every succession presumed or declared vacant.

152 The curatorship terminates when a regular heir who establishes his quality presents himself to take possession of the property.

If no spouse, relative or known legatee accepts the succession, the Crown in right of the province may have the curatorship terminated and obtain possession.

153 The curator to a vacant succession makes an inventory of the property of that succession; he manages the succession and, where applicable, winds it up; to this end, he has the same powers as a beneficiary heir.

154 The provisions of this chapter governing the form of the inventory, the notices to be given and the accounts to be rendered apply, unless incompatible, to the curator of a vacant succession.

CHAPTER V

ADMINISTRATION OF SUCCESSIONS

155 Upon motion by an heir, the court, if it deems it expedient, appoints a person to administer the succession.

The petitioner may be so appointed.

156 Any interested person may apply to have the administrator dismissed.

157 The administrator acts as a simple administrator of the property of another, on behalf of the heirs, until partition.

158 The administrator must make an inventory of the property of the succession in the same manner as the beneficiary heir.

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

160 Any interested person may require the administrator to furnish security in the same manner as the beneficiary heir.

161 When there are beneficiary heirs, the administrator must also comply with the rules governing benefit of inventory.

CHAPTER VI

UNDIVIDED OWNERSHIP AMONG HEIRS

162 The provisions of this Code dealing with undivided ownership apply to undivided ownership among heirs which results from death, subject to the provisions of this chapter.

163 Before partition, each heir may demand and receive payment of any divisible claim, in proportion to his share.

164 If a dispute arises as to the determination of the majority in value of the joint owners, provided in Article 187 of the Book on *Property*, the share of the heirs in the undivided property is determined by the court by valuation as provided in Article 722 of the Code of Civil Procedure.

The same rule applies to the division of profits and losses among the undivided heirs, except for the account to be settled at the time of the final liquidation.

165 If no administrator has been appointed under chapter V, any heir may be authorized, on motion, to collect from the debtors of the succession or from the holders or the depositaries of the funds of the succession, an amount to cover emergencies.

In granting the authorization, the court may issue any order it deems appropriate and, in particular, may prescribe all useful measures regarding such funds.

This authorization does not imply acceptance of the quality of heir.

166 Notwithstanding opposition by one or more of the undivided heirs, undivided ownership resulting from death may, taking into account existing interests and particularly the possibility of livelihood which the family drew from the undivided property, be maintained, upon motion, with respect

to a commercial, industrial, professional or other enterprise which was managed by the deceased, or with respect to a participation or securities in the enterprise.

Undivided ownership resulting from death may also be maintained by the court with respect to all or part of any immoveable property which was used by the deceased and by his spouse as a dwelling or to the right to leased premises used as a dwelling, without prejudice to the provisions of this Code governing the family residence and the spouse's right arising out of the succession.

167 If the deceased leaves no minor children, only his spouse may apply for maintenance of the undivided ownership, provided that before his death, he was a co-owner of the enterprise, of a participation, or of securities in the enterprise or of the immoveable property, or was a co-lessee of the dwelling.

If the deceased leaves one or more minor children, any heir may apply for maintenance of the undivided ownership.

168 Maintenance of undivided ownership may not be ordered for a term of more than five years.

It may be extended, in the case provided for in the first paragraph of the preceding article, until the death of the spouse and, in that provided for in the second paragraph of the same article, until the youngest child comes of age.

CHAPTER VII

LIABILITIES OF THE SUCCESSION AND SEPARATION OF PATRIMONIES

169 An heir who comes alone to a succession must discharge all its debts and charges.

170 When a succession devolves to several heirs, each of them is bound for the debts and charges in proportion only to his share, subject to the rules governing indivisible debts.

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

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

173 Nevertheless, if a pure and simple heir discovers new facts, or if creditors appear of whom he could not have been aware at the time of his acceptance, he may restrict his personal 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, on motion, makes any order deemed appropriate, determining the limit and the terms and conditions of the heir's personal liability.

In particular, it may liberate the heir completely, provided he abandons all that he has received from the succession.

174 Particular legacies are executed only out of the net assets of the succession.

Each heir is responsible only in proportion to his share.

175 If the assets are not sufficient to ensure full execution of the particular legacies, all of them are reduced proportionately, regardless of their object, unless the testator has established an order of preference among them.

176 The heirs are liable for the fiscal obligations of the deceased and of the succession in the same manner as for other debts.

A particular legatee is also liable for the fiscal obligations relating to the property bequeathed or to the transmission of the property.

However, if the law provides for an exemption or any other benefit in favour of an heir or a category of heirs, this is taken into account among the heirs, as are the rates applicable to each class of heir.

177 In addition to the personal recourses which may be exercised against them, the heirs remain hypothecarily liable for any property affected with a hypothec and included in their share, saving their recourse against those personally liable for their share, according to the rules applicable to the warranty.

178 The preceding articles do not prevent the creditors of the succession from suing for recovery of their claims out of all the property of the succession, as long as it remains undivided.

179 Saving stipulation to the contrary in the deed of partition, an heir who has paid part of the debts and charges of the succession in excess of the share for which he was liable has recourse against his coheirs for the reimbursement of the excess.

He may not exercise this recourse against the other persons entitled to the succession, even by virtue of subrogation in the rights of the paid creditor, except with regard to that part of the debt which each of those persons would have had to bear himself.

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

180 If one of the coheirs becomes insolvent, his share of the hypothecary or other debt is divided among all the others rateably in proportion to their respective shares.

181 The patrimony of the deceased is always separated from that of the heir without separation being applied for.

It has effect in respect of the creditors of the deceased and of the succession and in respect of those of the heir.

182 The property of the succession must be used to pay the creditors of the deceased and those legatees who inherited sums of money, in preference to any creditors of the heir.

If the property is found to be insufficient, the heir's property is also used to pay the claims, but only after separate payment is made to the creditors of any heir whose claim came into existence before the succession devolved.

183 The right to separation of patrimonies is exercised on the property as long as it is owned by the heir or on the price of the sale if it is still unpaid.

CHAPTER VIII

PARTITION AND RETURN

Section I

Partition

184 If all the undivided heirs are present and in agreement, partition may be made in such form and by such act as the interested persons deem proper.

185 The undivided heirs who proceed with partition by agreement make up the shares as they wish and decide together whether they will be attributed or drawn by lots, saving the rights of the surviving spouse under this Title.

If the undivided heirs deem it necessary to sell all or part

of the property to be divided, they also determine together the conditions of the sale.

186 A person entitled merely to enjoy a part of the undivided property may participate only in a provisional partition.

187 A consort common as to property may alone demand partition of the property devolved to him and which is to remain his private property; he may not, however, without the consent of his spouse, demand partition of property which has accrued to him and all or part of which may form part of the community.

The joint undivided heirs of a spouse common as to property may not demand final partition of the property which forms part of the community without impleading the consorts.

188 In the event of disagreement among the undivided heirs, partition can only take place under the conditions laid down in Articles 192 to 203 and in the forms required in the Code of Civil Procedure, saving their right to agree to observe only some of those forms and conditions.

189 If several persons under tutorship have the same representative but their interests in the partition conflict, a separate representative must be appointed for each of them.

If the representative of a person under tutorship is himself an undivided heir, an ad hoc representative must be appointed.

190 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.

191 An heir who has abstracted or concealed property of a succession, particularly one who has knowingly and in bad faith failed to include the property in the inventory, may not claim any share of that property.

This share benefits those who would have received it in his stead if he had renounced.

192 The person appointed in the manner provided in the Code of Civil Procedure makes up the shares.

193 Interested persons may agree to the allotment; in the absence of agreement, the shares are drawn by lot.

Before the drawing, each copartitioner may raise objections as to the making up of the shares.

194 In preference to any other heir, a spouse may make up his share so as to include the family residence, the household furniture, and any other property which is part of the mass to be apportioned, subject to Article 199.

If the value of the property thus included exceeds the spouse's portion, he may retain the property, subject to payment of any balance.

195 When the parts are equal, the number of shares made up is equal to the number of undivided heirs or partitioning roots.

When the parts are unequal, the number of shares made up is that necessary to allow drawing by lots.

196 The rules laid down for the division of the masses to be apportioned are also observed in the subdivision to be made among the partitioning roots.

197 When the shares are made up and composed, immoveables should not be broken up, nor should enterprises of any kind be divided.

Inasmuch as the breaking up of immoveables and the division of enterprises can be avoided, each share must, as far as possible, be made up wholly or partly of moveable or immoveable property, of rights or of claims of equivalent value.

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

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

This demand must be taken into consideration in making up the shares, bearing in mind the right of the spouse, the objections made, the necessity of liquidity for paying the debts, and the convenience of proceeding in such a manner under the circumstances.

In the event of contestation, the court decides on the application, on conditions deemed equitable.

199 Notwithstanding any objections by one or more of his copartitioners, an heir may demand the attribution, by way of partition, of a commercial, industrial, professional or other enterprise in whose operation he was actively participating at the time of the death. If the enterprise was operated as a partnership or a corporation, he may demand that the participation or securities forming part of the succession be attributed under the same conditions.

The same applies to any immoveable or part of an immoveable used as a dwelling by the heir or to the right to a lease of premises used as a dwelling by him.

In the event of contestation, the court decides on the application, taking into account the interests present.

When a balance must be paid, the court may determine

the terms and conditions of payment, particularly the amount of the balance which may be paid in instalments, the amount and the due dates of the instalments and the interest rate.

200 In the event of alienation, within three years following partition, of the property attributed under the preceding article, that part of the alienation price which exceeds the value estimated at the time of partition may be divided among the joint undivided heirs in the same way as if such an amount had existed at the time of partition.

201 The property is assessed according to its condition and its value at the time of partition.

If the parties cannot agree, the assessment is made by experts chosen by the parties or appointed by the court.

202 If certain property cannot be conveniently apportioned or attributed, interested persons may decide together to sell it.

In the absence of agreement, the sale may also be ordered by the court, upon motion.

203 The conditions and form of such a sale are determined by the interested persons together or, failing this, by the court.

If the disagreement among the interested persons concerns only the choice of the person to be entrusted with the sale, the court appoints him.

204 In order that the partition not be made in fraud of their rights, the creditors of the succession, and those of a copartitioner, may object to its being undertaken in their absence, and may intervene at their own expense.

205 After partition, each copartitioner must be given the titles relating to the property attributed to him.

The titles to divided property remain with the person

who has the greatest value in the property; that person must, whenever required, assist those of his copartitioners who have an interest in the property.

Titles common to the entire inheritance are delivered to the person the heirs have chosen to act as depositary; he must assist his copartitioners whenever required.

If the copartitioners disagree on the choice, it is made by the court.

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

Section II

Returns

§ - 1 Return of gifts and legacies

207 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.

208 The part of a gift or a legacy made subject to return to the consort entitled to inherit, to his spouse, or to both, is not returnable except as regards the share to which he is entitled under the marriage agreements.

209 An heir who renounces a succession is not obliged to return.

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

It is due only from one coheir to another.

It is not due to particular legatees or to the creditors of the succession.

211 Return is made by taking less.

Any stipulation requiring the heir to make return in kind has no effect.

212 However, an heir may return in kind the property given if he still owns it when partition takes place, unless, on his own initiative, he has affected it with a usufruct, a servitude, a hypothec or any other real charge.

213 Coheirs to whom return by taking less is due 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.

214 An heir who returns by taking less must return the value of the property given at the time of partition if the property still belongs to him.

If the property has been alienated before partition, its value at the time of alienation must be returned.

Bequeathed property, and that which remains in the succession, are assessed according to their condition and value at the time of partition.

A donor or a testator may impose a different method of assessment.

215 The returnable value defined in the preceding article is 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 returnable value is increased by the depreciation resulting from the actions of the person returning.

216 Property given or bequeathed which has been destroyed by a fortuitous event and without fault on the part of the donee or of the legatee is not subject to return, except to the extent that it has given rise to compensation.

217 If an heir chooses to make his return in kind, the settlement among coheirs is made taking account of Articles 215 and 216.

The heir is entitled to retain the property until he has been reimbursed the amounts he is owed.

218 If the copartitioners agree that property affected by a hypothec or a charge is to be returned in kind, the return is made without prejudice to the hypothecary creditors, whose claim is charged to the person returning in the partition of the succession.

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

§ - 2 **Return of debts**

220 An heir coming to partition must return to the mass to be partitioned the amounts he owes to the deceased, by

whatever title, and all amounts he owes to his copartitioners resulting from indivision.

The debts referred to in the first paragraph are subject to return even if they are not due when partition takes place.

221 Return is not due if the deceased has stipulated, by deed *inter vivos* or by will, that the debt is to be released upon his death.

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

223 If a copartitioner bound to return debts has himself claims to make, even though they are not due at the time of partition, he must return only the balance of his debt.

224 Return of debts is made by taking less.

The deduction effected by coheirs may be set up against the personal creditors of the heir returning.

225 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.

Section III

Effects of partition

§ - 1 The declaratory effect of partition

226 Partition is declaratory of ownership.

Each copartitioner 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 it from the beginning of the undivided ownership, and never to have owned the other undivided property.

Subject to the rules applicable to management of the affairs of another and to Article 218, acts performed by an undivided heir, or charges instituted by him respecting property which has not been attributed to him, cannot be set up against any other undivided heirs who have not consented to them.

This article does not apply to the juridical relations between each coheir and his legal successors.

227 Acts validly entered into during undivided ownership in conformity with chapter VI, and those to which all the undivided owners have given their consent, retain their effect, regardless of who, at partition, receives the property to which they apply.

Each undivided owner is deemed to have performed the acts concerning the property which devolves to him.

228 Article 226 applies to hereditary claims against third parties who take part in the partition, to any transfer of the claims made during the undivided ownership by one of the coheirs, and to any seizure of the claims made by creditors of one of the coheirs.

These provisions do not prevent each heir from validly receiving payment for his hereditary share in the claim, until partition, or from invoking compensation for that share.

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

§ - 2 Warranty of copartitioners

229 Copartitioners are warrantors towards each other, only for the disturbances and evictions arising from a cause prior to the partition.

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

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

231 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 copartitioner suffers eviction through his own fault.

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

The loss is assessed as of the day of the partition.

If one of the copartitioners is insolvent, the share for which he is liable must be divided proportionately among the copartitioner who has suffered the eviction and all the solvent copartitioners.

233 An action in warranty may only be instituted within three years following eviction or discovery of the disturbance.

However, the action in warranty by reason of insolvency of a debtor of the succession may not be instituted if three years have elapsed since the partition.

234 The privilege of copartitioners is abolished.

The copartitioners may stipulate a hypothec to ensure the warranty.

Section IV

Nullity of partition

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

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

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

238 In deciding whether there is lesion, the value of the property as at the time of partition must be considered.

239 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.

TITLE THREE

TESTAMENTARY SUCCESSION

CHAPTER I

WILLS

Section I

General provisions

240 Every person of major age may make provision, in a manner other than that provided by law, for the transfer upon his death of all or part of his property, subject to the provisions regarding hereditary reserve.

241 A will may contain only provisions regarding its execution or the revocation of previous testamentary provisions.

242 A will may always be revoked.

The acceptance of a will made during the lifetime of the testator is without effect.

No person, even in a marriage contract, except within the limits provided in Article 488 of the Book on *Obligations*, may renounce the right to make a will, to dispose of his property in contemplation of death or to revoke his testamentary dispositions.

243 No person may subject the validity of the will he intends to make to any formality, expression or sign not required by law, or to other derogatory clauses.

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

245 A testamentary provision or a stipulation limiting the rights of a surviving spouse in the event of remarriage is without effect, subject to express provision of law.

246 The capacity of a testator is required only at the time the will is signed.

247 A person of major age under tutorship may not make a will.

A person of major age under curatorship may make a will without assistance.

248 A minor sixteen years old may dispose of his property by will in the same manner as a person of major age, provided he does so by means of an authentic will.

249 Two or more persons may not make a will in the same instrument.

250 A tutor or curator may not make a will on behalf of the person whom he represents or assists, either alone or jointly with that person.

251 A person incapable of making a will may nevertheless receive by will.

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

253 A legatee must have the qualities required to inherit at the time the succession devolves, subject to the rules applicable to substitution and trusts.

254 Representation occurs in testamentary succession in the same manner as in intestate succession, unless it is excluded by the testator either expressly or through the effect of the provisions of the will.

Section II

Forms of wills

255 No person may make a will unless it is authentic, holograph or made in the presence of witnesses.

256 The formalities governing 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, the will is valid in another form, provided it meets the requirements of that other form.

§ - 1 Authentic wills

257 An authentic will is received in notarial form *en minute.*

Except in the cases provided for in Article 266, the notary reads the will to the testator alone.

The will contains a declaration by the testator to the effect that he has requested the notary to draw up his will, that the notary has read the will to him, and that the will contains the exact expression of his wishes.

The declaration is then read by the notary to the testator in the presence of one witness, or, in the case governed by Article 266, of two witnesses and all sign the will in the presence of one another.

258 Subject to Article 265 and to the *Notarial Act*, the formalities governing authentic wills are presumed to have been observed even when this is not expressly stated.

259 Every witness required for an authentic will must be named and designated in the will.

260 Any person of major age may witness an authentic will, except the spouse, or any employee of the notary who receives it.

261 Consorts may not act as witnesses together.

262 An authentic will may not be received by a notary related or allied to the testator either in the direct or in the collateral line up to and including the third degree.

The witnesses may be related or allied to the testator, to the notary or to each other.

263 The notary who receives a will may be appointed executor or trustee in the will, even if he is remunerated for this duty.

264 When the testator knows neither French nor English, an authentic will may be drafted in a foreign language, provided the notary and the witness know that language.

The notary records in the deed the testator's declaration that he knows neither French nor English, and the witness's declaration that he knows the foreign language used by the testator; he then draws up the will in the language of the testator, and immediately translates it into either French or English.

The text in the foreign language makes proof until improbation; the translation makes proof of its conformity to the original until proof to the contrary.

265 An authentic will is subject to additional formalities when the testator is blind, deaf, mute or unable to sign.

The observance of these additional formalities and their cause are expressly mentioned in the instrument.

266 In the cases governed by the preceding article, the will is received before a notary and two witnesses.

The notary reads the will of the testator who is unable to sign, or is blind or mute, to this testator, in the presence of the two witnesses.

The same applies to wills made by deaf mutes and deaf persons; deaf persons also read their own wills in the presence of the notary and of the witnesses.

The verbal declaration of the testator to the effect that he is unable to sign compensates for the absence of a signature.

267 Any person unable to express himself aloud who wishes to make an authentic will must convey his wishes to the notary in writing.

§ - 2 **Holograph wills**

268 A holograph will must be written entirely in the hand of the testator and signed by him.

It is subject to no other form.

269 A will written using a mechanical device is not valid as a holograph will.

§ - 3 **Wills made in the presence of witnesses**

270 A will made in the presence of witnesses is written by hand or using a mechanical device, by the testator or by a third party.

In the presence of two witnesses, the testator then declares that the document he is presenting is his will; he need not divulge its contents; he signs at the end with his

name or his mark or, if he has already signed, he acknowledges and confirms his signature.

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

When the will is written by a third party or using a mechanical device, the testator must also initial each page of the instrument which does not bear his signature.

271 The witnesses are subject to the rules governing authentic wills.

272 A person who does not know how to read, or who cannot read, may not make a will in the presence of witnesses.

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

Section III

Probate of wills

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

275 The heir need not be summoned to the probate of the will unless he is so ordered.

276 A will which is not produced, but which can be proven in accordance with the Book on *Evidence*, may be probated upon motion, provided proof is made of the facts justifying this procedure and of the contents of the will.

Section IV

Revocation of wills

277 A will may always be wholly or partly revoked.

278 Revocation is express or tacit.

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

The revocatory clause may be general or specific.

280 A will which revokes another may be made in a form different from that used for the will revoked.

281 Destruction, tearing or erasure of a holograph will or of a will made before witnesses entails revocation, unless it is established that this was not done deliberately by the testator or on his instructions.

The same applies to destruction or loss of a will, of which the testator was aware when he would have been able to replace the will, had he so desired.

282 A subsequent testamentary disposition incompatible with a previous one entails tacit revocation.

The revocation is only effective to the extent of the incompatibility.

The revocation retains its full effect even if the new provision lapses.

283 Revocation contained in a will which is null by reason of informality has no effect.

284 Voluntary or forced alienation of a thing bequeathed, even when made under a resolutive condition or with the right

of redemption, or by exchange, 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 patrimony of the testator, unless he appears to have intended the contrary.

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

285 Revocation of an act which expressly or tacitly revokes a will does not revive a previous will unless the testator has made clear his intention to the contrary or unless such intention is the result of circumstances.

CHAPTER II

TESTAMENTARY DISPOSITIONS

Section I

Various kinds of legacies

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

287 A universal legacy enables one or more persons to receive an entire succession.

288 A legacy by general title is one which confers the right to either:

1. the ownership or the usufruct of an aliquot share of the succession or of all or an aliquot share of the immoveable or moveable property; or
2. the usufruct of the entire succession.

289 All other legacies are by particular title.

290 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.

291 The property of the deceased which has not been disposed of by him or respecting which the provisions of his will are without effect, remains in his intestate succession and devolves to his legal heirs.

292 The provisions of any will under which an heir is appointed or a gift or a legacy is made, or which otherwise make known the intention 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

Lapse, resolution and nullity of legacies

293 A legacy lapses when the legatee does not survive the testator, unless there is representation.

294 A legacy lapses when the legatee repudiates it, is not able to accept it, or dies before the fulfilment of the suspensive condition accompanying it.

295 A legacy also lapses if the thing bequeathed perishes totally during the lifetime of the testator or before the legacy made under a suspensive condition devolves.

The legatee suffers the loss of the thing bequeathed if the loss occurs after the legacy devolves, saving his recourse against the person responsible for the loss.

296 When a legacy charged with another legacy lapses from

a cause depending on the legatee, the subsidiary legacy does not lapse.

This 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.

297 Unless there is representation, 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.

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

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

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

300 A condition that is impossible or is contrary to good morals, to the law or to public order is deemed not written.

301 The same applies to any penal clause intended to prevent contestation of the validity of the will and any disinheritance which takes that form.

302 A legacy made in an authentic will to the notary, to one of his relatives in the first degree, to his spouse or to the witnesses has no effect, but the other provisions of the will subsist.

The same applies even when there are additional witnesses.

A legacy in favour of an executor or a trustee who acts as

a witness also has no effect with respect to the portion which exceeds his remuneration.

303 In a will made before witnesses, a legacy made to the witnesses, their spouses or any of their relatives in the first degree has no effect, but the other provisions of the will subsist.

304 When execution of a legacy is subject to a term, the legatee retains an acquired right which may be transferred to his heirs.

305 When a legacy is made under a resolutive condition, the legatee obtains the benefit of it upon the death of the testator, subject to the effect granted to the fulfilment of the condition.

306 A legacy is subject to resolution when the legatee is unworthy.

The causes and effects of unworthiness are governed by Articles 7 and following.

307 A legacy of a thing belonging to another has no effect unless it carries with it the obligation for the heir to obtain the thing bequeathed for the legatee.

CHAPTER III

THE EFFECT OF TESTAMENTARY DISPOSITIONS

Section I

General provisions

308 The rules on acceptance and on repudiation of intestate succession apply to testamentary successions.

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

310 Fruits and interest from the thing bequeathed accrue to the benefit of the legatee from the time of the testator's death.

311 When immoveable property is bequeathed, any contiguous or annexed immoveable property acquired by the testator after the will is drawn up is presumed included in the legacy, provided the property forms a unit with the immoveable bequeathed.

312 When a business concern is bequeathed, the same presumption applies to any operations acquired or created after the will is drawn up which, at the time the testator dies, make up an economic unit with the business concern bequeathed.

313 Subject to Article 310, when securities are bequeathed, the legacy is presumed to include those rights attached to them which had not been exercised when the testator died.

314 The legacy of an undivided thing is presumed to have as its object only the share the testator had in the thing when he died.

Section II

Payment of debts and of legacies

315 The liability of a legatee for debts is described elsewhere in this Code, mainly in the Title on *Intestate Succession* and in the chapter on *Usufruct*.

316 The legatee by general title of a usufruct is personally liable towards the creditor for the debts of the succession, even for the principal, in proportion to what he receives; he is also hypothecarily liable for anything which affects the 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 stated in Article 139 of the Book on *Property*.

317 The testator may change the manner and proportion in which the law holds his heirs and legatees liable for payment of the debts and legacies, without prejudice to the personal or hypothecary action of the creditors against the heirs and legatees, who have recourse against those upon whom the testator imposed the obligation.

318 Particular legacies are paid by the intestate heirs, and the universal legatees or legatees by general title, each in the proportion for which he is liable, as in the contribution to debts; the legatees are entitled to demand separation of patrimonies.

If the legacy is imposed on one particular intestate heir or legatee, the personal action of the particular legatee does not extend to the others.

The testator may ensure the right to a legacy by a special hypothec on the property of the succession.

319 When a legacy by particular title includes a universality of assets and liabilities, such as a succession or a business concern, the legatee of the universality is personally and solely liable for the debts connected with it, subject to the rights of the creditors against the heirs who have their recourse against the particular legatee.

320 When the property of a succession is insufficient, particular legacies which have preference are paid first; the remainder is then divided rateably among the other legatees in proportion to the value of each legacy.

The legatee of a certain and determinate object takes it, and is not compelled to contribute toward payment of the other legacies which have no preference over his own.

321 Separation of patrimonies takes place in testamentary succession in the same manner as in intestate succession.

To obtain reduction of any particular legacy, the creditor must have discussed the heir who is personally liable.

The creditor exercises reduction against each particular legatee for only a share proportional to the value of his legacy, but the particular legatees may free themselves by surrendering the legacy or its value.

322 Separation of patrimonies operates to the detriment of the creditors of the legatee whenever a particular legacy is reduced.

323 If bequeathed property has been hypothecated, the heir liable for the debts according to the rules already laid down must pay the hypothecary debt on expiry of the term or obtain a release from the hypothec.

324 A particular legatee who, in order to free the property bequeathed to him, pays a hypothecary debt for which he is not liable, has recourse against those who come to the succession, each for his share, with subrogation in the same manner as any other person acquiring by particular title.

325 A usufruct established on a bequeathed thing 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.

326 If, however, the testator was not personally liable for the hypothec affecting at the same time the particular legacy and

the property remaining in the succession, the benefit of division may be claimed reciprocally.

327 A legacy to a creditor is not presumed to have been made as payment of his claim.

CHAPTER IV

TESTAMENTARY EXECUTION

Section I

Appointment of executors

328 A testator may designate one or more persons to ensure the execution of his last wishes.

He may provide for their successive replacement either by designating persons to replace them, or by empowering the original executors to replace themselves. He may also authorize them to designate additional executors.

The testator may also entrust the court with the appointment or replacement of the executors.

These persons have the quality of testamentary executors, regardless of how the testator may have designated them.

329 If the executor designated by the testator has not accepted the office, or if for any reason he cannot be designated or replaced according to the provisions of the will, the court may appoint an executor, on motion by any interested person.

330 If there is no executor, or if an executor has not been appointed or replaced in the manner in which this may be done, the execution of the will falls entirely upon the heir who receives the succession, subject to the following article.

331 If there is no executor, any heir may apply to the court to have an administrator appointed under Article 155.

Any interested person may also have an administrator appointed for property situated in Québec which is part of a succession which devolved outside Québec.

Section II

Capacity and acceptance of executors

332 A minor and a person of major age under tutorship or curatorship may not act as an executor.

333 Legal persons so empowered by law may act as executors.

334 No person is bound to act as an executor.

335 Acceptance may be express or tacit.

336 The Title on *Administration of the Property of Others* applies to executors, saving inconsistency.

An executor may not be dismissed, however, except by order of the court.

337 If several executors have been appointed and one or more of them have accepted the office, those executors who have accepted may act alone.

The same is true if several have accepted but only one or more survive or retain their office.

338 If the court requires an executor to provide security, the costs are borne by the succession.

The executor upon whom this obligation is imposed may renounce his office.

339 If the testator himself has not so provided, the executor is entitled to equitable compensation, determined by agreement with the heirs or, in the absence of agreement, fixed by the court.

When execution of a will falls under the professional competence of the person to whom it has been entrusted, the executor is entitled to the usual remuneration.

340 When a legacy made to an executor has no other cause than his remuneration, it lapses if he does not accept the office.

Section III

Obligations of executors

341 An executor has the obligation of administering the property of the succession in accordance with the instructions of the testator and the law.

He executes the provisions of the will.

He has the will probated, if applicable.

If the validity of the will is contested, he may become a party to support it.

He executes all other obligations imposed upon him by law as an administrator of the property of another.

342 If, due to the absence of some of the executors, a majority cannot be obtained, those present may act alone, even before inventory, concerning the custody of property or acts requiring dispatch.

343 Even when the testator or the heir claims to have exempted the executor from making inventory, the executor must make inventory in the same manner as a beneficiary heir.

The inventory, however, may be made either before a notary or before two witnesses.

344 Any heir and any creditor may consult the inventory and obtain a copy of it at his own expense.

345 Moreover, when there are beneficiary heirs, the executor must follow the rules concerning benefit of inventory.

Section IV

Powers of the executor

346 Upon the death of the testator, the executor is seized of all the property of the succession for the purposes of executing the will; he exercises the powers of simple administration regarding the property.

He may claim the property of the succession, even against the heirs.

347 The Title on *Administration of the Property of Others* applies to the executor to the extent that it is not inconsistent with this chapter.

348 However, until the inventory has been made, the executor has only the powers of a person entrusted with custody of the property of another.

In addition, he may perform any acts requiring dispatch.

349 The executor remains seized until the will is fully executed, but the seizin may not exceed two years unless an extension is agreed to by all the heirs or is granted by the court for cause.

The testator may not extend the seizin beyond this period.

350 The testator may restrict the seizin of the executor or modify his powers and obligations within the limits permitted by law.

351 Upon motion by any interested person, the court, according to the circumstances, may vary the executor's seizin or his powers in any manner, under the conditions it determines, or it may terminate his seizin or his powers completely.

352 The executor collects the claims, and pays the debts and the costs of administration.

He discharges the particular legacies out of the property of the succession.

Unless the testator has provided otherwise, the duties and taxes payable on the deceased person's property are divided among the heirs in accordance with Article 176.

353 The executor partitions the property according to the rights of the interested persons.

Before composing the shares, he hears any heirs who request to be heard. Articles 194 to 203 then govern the manner in which the shares will be composed, subject to the provisions of the will.

CHAPTER V

SUBSTITUTION

Section I

General provisions

354 There is substitution when a donee or a legatee is obliged to remit what he receives, either upon his death or previously.

355 Moveable property and immoveable property may be the object of a substitution.

356 The institute is the person obliged to remit; the substitute is the person subsequently entitled to receive.

When there are two degrees in the substitution, the substitute who receives under an obligation to remit becomes an institute with respect to the subsequent substitute.

357 A substitution must be established in writing; failing this, the stipulation which obliges the institute to remit has no effect.

358 A substitution may exist even though such words as "trust", "usufruct" or "prohibition against alienation" are used to express the right of the institute.

In determining whether or not there is substitution, consideration is given to the entire tenor of the deed and the intent which it sufficiently expresses, rather than to the meaning of particular words.

359 A substitute need not exist when a gift is made or a succession devolves.

He need exist only when the substitution opens.

360 The prohibition against making a will subject to no other condition or indication entails substitution in favour of the intestate heirs of the donee or legatee, with respect to property given or bequeathed which remains at the time of his death.

361 A prohibition against alienation has no effect unless it can stand as a substitution.

362 However, the gift or legacy of an immoveable affected by a right of usufruct, use or habitation may be accompanied

by a prohibition against alienation without the consent of the beneficiary of the right affecting the immoveable.

363 No substitution may extend to more than two degrees, exclusive of the institute.

Any stipulation which extends a substitution to more than two degrees has no effect as regards the excess.

364 Degree is defined by head and not by root.

365 However, a transfer is not counted as a degree of substitution if it takes place between co-institutes when one of them dies, provided it is stipulated that his share passes to the surviving institutes, without prejudice to the rights acquired following the death of an institute; the exercise of these rights is suspended until the last institute dies.

366 Saving incompatibility, the rules governing legacies apply to substitutions created by gift or by will.

Representation, however, does not take effect with respect to the institute.

367 Lapse with regard to the substitute benefits the institute.

Lapse of a testamentary substitution with regard to the institute benefits the substitute.

368 A granting donor may, until opening, revoke the substitution with respect to the substitute, as long as no acceptance has been made by or for the substitute.

The substitute is presumed to have accepted when either of his parents is the institute.

Revocation of the substitution never benefits the grantor.

In the absence of any provision to the contrary, revocation benefits the cosubstitute, if there is one; if there is none, it benefits the institute.

369 The grantor may reserve for himself the right to determine the share of each substitute.

He may also confer this right upon the institute.

370 If a donor reserves for himself the right to later substitute property given by him, even in a marriage contract, this right has no effect.

371 The grantor may allow the institute to dispose gratuitously of the property of the substitution, or to alienate it without being obliged to replace it.

In this case, the substitution has effect only with regard to the remainder.

Section II

Substitution before opening

372 Before opening, the institute holds for himself as an owner, subject to his obligation to remit the property of the substitution to the substitutes.

373 Acts performed by the institute are subject to the supervision of the Public Curator.

374 Within two months after the gift or after the acceptance of a legacy, the institute, having notified the Public Curator and all interested persons, must make an inventory at his own expense of all the substituted property, unless it has already been identified in the deed setting up the substitution or in the general inventory of the succession.

Failing this, the Public Curator, the substitutes or their

legal representatives may make the inventory at the expense of the institute, provided they notify him and the other interested persons.

Any provision to the contrary is without effect.

375 Once a year, the institute must notify the substitutes and the Public Curator of any change in the inventory and of the use he has made of the substituted property.

Any provision to the contrary is without effect.

376 The institute must perform all acts necessary to maintain and preserve the property.

He must pay all fees and expenses chargeable to revenue which are due before the opening, except for reimbursement in proportion to the duration of his right.

377 The institute receives money due, gives discharge for it, and exercises all judicial recourses related to it.

378 With respect to his right to exploit mines, quarries and trees on the land subject to the substitution, the institute is subject to the rules governing usufruct.

379 The institute may lease, hypothecate or alienate by onerous title the moveable or immoveable property of the substitution.

The lessee, creditor or acquirer has a definitive right which is not affected by the right of the substitutes at the opening of the substitution.

Except in cases of fraud, the substitutes have recourse only against the institute.

Any provision to the contrary is without effect.

380 The institute must invest the proceeds of any alienation of substituted property, of capital paid to him, and of cash.

381 In any alienation, use or replacement of substituted property, the institute must act with prudence and diligence, bearing in mind the eventual rights of the substitute.

Any replacement made in conformity with Article 552 of the Book on *Property* is presumed proper.

382 Any alienation by gratuitous title of the property of the substitution by the institute is invalid unless the grantor allowed it.

383 The institute must insure the immoveable property at his own expense against all ordinary risks, particularly fire and theft.

The amount of insurance is substituted property.

384 The institute is responsible for all damage caused to the substituted property, unless he can prove absence of fault on his part.

385 If the institute fails to execute his obligations, is guilty of bad administration, or deteriorates, dissipates or wastes the substituted property, the judge, on motion by the Public Curator or by any interested person and depending on the gravity of the circumstances, may deprive the institute of the income, compel him to restore the capital or to furnish security, pronounce the forfeiture of his rights in favour of the substitutes or appoint a sequestrator.

The substitute is also entitled to any conservatory recourse to ensure protection of his rights.

386 Creditors of the institute may seize the rights conferred on the institute by the substitution, and have them sold by judicial sale.

387 If substituted property is seized for debts of the institute, the substitutes may oppose the seizure.

If there is no opposition, the sale is valid; the purchaser has a definitive title, and the substitutes may exercise recourse only against the institute or his heirs.

388 Before the opening of the substitution, the substitute may dispose of or renounce his eventual right to the property substituted.

Section III

Substitution after opening

389 Unless an earlier time has been set, the substitution opens upon the death of the institute.

If the institute is a legal person, the substitution cannot open more than twenty-five years after the gift or after the succession devolves.

Any provision setting a later date for the opening is without effect.

390 Upon the opening of the substitution, the institute or his heirs render account and remit the property with its accessories. If they have collected the income earned since the opening, they hand it in unless the substitute has been put in default and has failed to assume his quality.

391 If the substituted property is no longer in kind, the institute must hand in whatever has been acquired through replacement.

If it is impossible to remit property because of the act of the institute, either he or his heirs must pay the value of the property on the day of the opening.

392 The successors of the institute, as administrators of the property of another, must continue anything which is necessary as a result of acts performed by the institute, or anything which cannot be deferred without risk of damage.

393 The substitute receives the property directly from the grantor.

Upon the opening of the substitution, the substitute is seized of the ownership of the property like a legatee.

394 Co-institutes are solidarily liable toward the substitute.

395 If the institute has made improvements to the substituted property, his recourse against the substitute is subject to the rules applicable to possessors in good faith.

396 If the institute has paid capital debts without having been charged to do so, he is entitled to reimbursement, with interest, from the opening.

397 The expenses of judicial proceedings and of major repairs, and other extraordinary expenses that the institute assumes for the purposes of the substitution, are refunded, in whole or in part, to him or to his successors, according to what is found equitable at the time of the opening.

398 The opening of a substitution revives the claims and debts which existed between the institute and the grantor, and terminates the confusion, within the person of the institute, of the qualities of creditor and debtor.

However, the confusion subsists concerning any interest which has accrued until the opening.

399 The institute or his successors, in exercising their rights, are entitled to separation of patrimonies against the substitute, and may retain the property until they are paid.

400 The institute who is a minor or a person of major age under tutorship may not invoke his status in order to be relieved of the obligations imposed on him by law in favour of the substitutes, saving, however, his recourses against his tutor or any other representative.

BOOK FOUR

PROPERTY

TITLE ONE

NATURE AND KINDS OF PROPERTY

1 Property consists of the personal and real rights that belong to a person.

2 Real rights relate to things or to rights.

CHAPTER I

MOVEABLES AND IMMOVEABLES

3 Property and things are moveable or immoveable.

4 Property and things are moveable unless the law provides otherwise.

5 Immoveable things are land, the buildings and other works incorporated therewith, and anything which is an integral part of such land, buildings or works.

6 Plants and minerals are integral parts of the land as long as they are not separated or extracted from it.

Nevertheless, harvests and fruits of plants are moveable even when not separated from the land.

7 All things which are incorporated into an immoveable, regardless of who has effected the incorporation, are integral parts of the immoveable.

The same applies to all things which are physically attached to an immoveable but which do not lose their individuality, without prejudice to the existing rights of third parties thereto.

8 When a thing which forms an integral part of an immoveable is temporarily detached from it, such thing

remains immoveable as long as it is intended that it be put back.

9 An immoveable right is a real right having as its object either an immoveable thing or an immoveable right and any action to exercise these rights or to obtain possession of an immoveable thing.

10 Moveables used for the commercial, agricultural or industrial exploitation of an immoveable remain moveable.

11 Rights established in a bearer instrument are deemed corporeal moveables.

12 Energy which has been produced is deemed a corporeal moveable, whether its source is moveable or immoveable.

CHAPTER II

THINGS IN THEIR RELATION TO THOSE WHO HOLD RIGHTS TO THEM OR WHO POSSESS THEM

13 Certain things cannot be owned; their use, which is common to all, is governed by law.

14 Certain things are not the object of any rights although they may become so.

15 Moveable things which have never belonged to any person or which have been voluntarily abandoned by their owner belong to the person who takes physical possession of them by occupation, subject to express provision of law.

16 A thing which has been lost still belongs to its owner, subject to the rules of prescription and express provision of law.

17 A treasure belongs to the person who finds it on his land.

A treasure found on land belonging to another person belongs half to the person who finds it and half to the owner of the land.

A treasure is any hidden or buried thing, discovered by chance, which no person can prove that he owns.

18 Immoveables which have no owner belong to the Crown in right of the Province.

The rights of the Crown to vacant or irregular successions are defined in the Book on *Succession*.

19 A person may hold, with respect to a thing, a right of ownership or a dismemberment of the right of ownership.

Exercise in fact of any such right constitutes possession.

TITLE TWO

POSSESSION

CHAPTER I

THE NATURE OF POSSESSION

20 Possession is the exercise in fact of a real right, by oneself or by another, as holder of such right.

Such intention is presumed. If it is shown to be lacking, there is detention.

21 When one person has begun detention for another, he is presumed to exercise such detention in the same quality, unless interversion of title is proven.

Proof can result only from unequivocal facts which contradict the right of the person on whose behalf the detention is effected.

22 Possession cannot be based on any act which is merely facultative or of sufferance.

23 If possession is to produce legal effects, it must be continuous, peaceful, public and unequivocal.

24 The present possessor is presumed to have been in continuous possession from the time he assumed possession.

25 Where possession is discontinuous, violent, clandestine or equivocal, it begins to produce its effects when the defect has ceased.

Successors by any title do not suffer from such defects in the possession of previous holders, provided their own possession can produce juridical effects.

26 A thief may never invoke the effects of possession.

This does not apply to the thief's successors by any title.

27 A possessor in good faith is a person who, when his possession begins, is justified in believing himself the holder of the right he is exercising.

His good faith ceases when his right is judicially contested.

28 A possessor is presumed to be in good faith.

CHAPTER II

EFFECTS OF POSSESSION

29 The possessor is presumed to be the holder of the right he is exercising.

30 The possessor may avail himself of possessory actions, under the conditions provided by the Code of Civil Procedure.

31 Possession vests the possessor with the real right he is exercising, under the conditions determined in the Books on *Prescription* and on *Publication of Rights.*

32 Improvements made by the possessor confer upon him the right to the recourses provided for in Articles 78, 79 and 80.

33 A possessor in good faith acquires the fruits of the thing and bears the cost of production.

A possessor in bad faith owes such fruits as the thing should have yielded as of the day when his bad faith commenced.

TITLE THREE

THE RIGHT OF OWNERSHIP

CHAPTER I

NATURE AND SCOPE OF THE RIGHT OF OWNERSHIP

34 Ownership is the right to use, enjoy and dispose of things to the fullest, within the limits and under the conditions established by law.

35 The owner of a thing owns all that it produces and bears the cost of production, subject to Article 33.

36 The owner of a thing assumes the risks of its loss and deterioration.

37 Ownership of the soil entails ownership of what is above and below the surface.

The owner may effect any work, building, plantation and excavation that he thinks fit, upon or below the surface, subject to restrictions provided by law.

38 However, ownership of the soil does not entail ownership of what is above and below the surface when there is a declaration of condominium, or the establishment of a right of superficies, or when the owner has otherwise disposed of his right to what is above and below the surface.

39 The owner of land may prohibit anyone from making use of it and from using anything above or below the surface, subject to express provision of law.

A person over whose land branches or roots extend from a neighbouring property may himself cut them as far as the

dividing line, or compel his neighbour to cut them, without prejudice to his other rights.

40 The owner of land owns any springs found on it; he may use and dispose of them in the same manner as he may use and dispose of other parts of his land.

41 Subject to any special laws, a riparian owner, for the use of his property, may make use of any watercourse which borders or crosses it.

As the watercourse leaves his property, he must direct it to its regular course.

He may not, by such use, prevent any other riparian owner from exercising the same right.

42 Subject to any special laws, any person may travel on such watercourses, provided he gains legal access to them, causes no prejudice to the riparian owner, and does not set foot on the banks.

CHAPTER II

LIMITATIONS ON THE RIGHT OF OWNERSHIP

Section I

Expropriation

43 No person may be compelled to give up his property, except by expropriation for public purposes and in consideration of an indemnity, in accordance with the law.

Section II

Boundaries

44 Any owner may compel his neighbour to determine the boundaries between their contiguous properties, under the conditions provided in the Code of Civil Procedure.

Section III

Flowing water

45 Water must be allowed to flow naturally from higher land to lower land.

The owner of the lower land may not erect any dam to prevent this flow.

The owner of the higher land may not do anything to aggravate the condition of the lower land.

46 Roofs of buildings and other constructions must be built in such a manner as to prevent rain and snow falling on the neighbouring land.

Section IV

Fences

47 Any owner may fence his land at his own expense, subject to express provision of law.

He may also compel his neighbour to share the cost of building a common separation to divide their respective properties.

The court, taking account of usage and of the circumstances of the case, decides any dispute resulting from a disagreement between neighbouring property owners.

48 A fence which separates contiguous lands is presumed to belong to both neighbours in co-ownership.

49 A ditch which separates two contiguous lands is presumed to belong to both neighbours in co-ownership.

However, when the embankment or the earth thrown out of a ditch is on one side of it only, the ditch is presumed to belong exclusively to the owner on whose side the earth is.

Section V

Common ownership

50 The owner who builds a wall to support a building must erect the wall exclusively on his own land, although the foundation footings may encroach upon his neighbour's land.

51 However, neighbouring owners may agree to build a wall on both sides of the dividing line and to share the expense.

The wall is common, along all or part of its length.

52 When a private wall immediately adjoins the dividing line, the neighbouring owner may render all or part of the wall common by paying the owner of it one-half of the value at the time of the part rendered common, and one-half of the value of the ground on which the wall is built.

53 However, this option exists only in those cases where the wall supports a building; common ownership may then be acquired, regardless of the type of materials used to construct the wall or the buildings.

54 When buildings are supported by a wall between them, the wall is presumed common to the full height of the common portion.

55 Each owner may build against a common wall and place joists or beams there.

Neither owner may do so, however, without the consent of the other; if there is disagreement, he may apply by motion to the court to have determined the means necessary to ensure that the new construction does not prejudice the rights of the other owner.

56 Each co-owner is responsible for maintaining, repairing and rebuilding a common wall, in proportion to his right.

A co-owner who wishes to avoid this obligation may abandon his right of common ownership and renounce his right to make use of the wall.

57 Each co-owner may increase the height of the common wall at his own expense.

Both parties must first obtain an expert appraisal as to whether the wall can support the portion to be added. If the opinion is affirmative, the owner who is erecting the additional portion must pay the other an indemnity representing one-sixth of the value of the additional portion.

If the expert appraisal shows that the wall cannot support the portion to be added, the owner who wishes to increase the height must have it rebuilt entirely at his own expense, and any excess thickness must be on his side.

In both cases, the person who has increased the height of part of a wall is the owner of that part of the wall, and he alone must bear the costs of maintaining, repairing and rebuilding it.

58 A neighbour who has not contributed to raising the height of the wall may acquire common ownership of the part raised by paying half of its then real value and, if necessary, the value of half of the ground used for the excess in thickness.

He must in addition return the indemnity received under the preceding article.

Section VI

The right of view

59 A co-owner of a common wall may not make any opening in such wall unless he has obtained a servitude of view from the other co-owner.

60 The owner of a wall which is not common may, even if it is less than one metre ninety away from the dividing line, make lights in it, namely windows or other apertures made in such a way that they cannot be opened.

These lights must not be transparent, but only translucent.

There may also be oblique views in such a wall.

61 No person may have any direct view, gallery, balcony or other projection, less than one metre ninety from the dividing line, over land adjacent to his.

This prohibition does not apply to doors without glass, or to stoops, used for entering and leaving buildings.

62 The prohibition contained in the preceding article does not apply to any owner who has provided views at a distance less than that prescribed, but is still unable to see because of the presence of a wall or a fence separating the two neighbouring properties.

If this obstacle disappears, the prohibition revives and is not prevented from applying by prescription.

63 These distances are measured from the outside facing of the wall where the opening is made, and, if there is a balcony or other similar projection, from the outside line of the balcony or projection.

Section VII

The right of way

64 The owner whose land is enclosed on all sides by that of others, or who has only insufficient access to the public road for the use of his land, may require one of his neighbours to provide him with the necessary passage-way, subject to an indemnity proportionate to the damage he may cause.

65 The right of way is claimed from that neighbour whose property most naturally lends itself to that purpose.

For this purpose, consideration is given to the state of the premises, the convenience to the enclosed land and the inconvenience the way causes to the affected land.

66 If the land becomes enclosed as a result of a partition, a will, or a contract, the way may be claimed only over that part of the land which still provides access to the public road.

The way is then provided without indemnity.

67 The person who enjoys a right of way must build and maintain all works necessary to ensure that his right is exercised under conditions the least unfavourable to the land across which the way is situated.

68 If the conditions provided for in Article 64 cease to exist, the right of way is extinguished.

The indemnity is not reimbursed; if the indemnity was in the form of annuities, no future payments are owed.

Section VIII

Access to another person's land

69 The owner of land may prohibit any person access to it, unless the access is necessary to repair a wall or a construction erected on neighbouring land; in this case, a notice must first be given to the owner.

The owner may then claim an indemnity if he suffers any damage as a result.

70 Similarly, if, by the effect of a force of nature or a fortuitous event, any objects are carried, or animals stray, on to land belonging to another, the owner of the land must allow them to be searched for and removed.

If he suffers damage by so doing, he may claim an indemnity.

CHAPTER III

ACQUISITION OF THE RIGHT OF OWNERSHIP

71 The right of ownership is acquired by occupation, by accession, by succession, by contract, by prescription and by any other means provided by law.

72 Ownership of a thing entails ownership of all that is united to or incorporated with the thing.

This means of acquiring ownership is called accession.

Section I

Accession of immoveables

73 Accession of any moveable or immoveable thing to an immoveable may be voluntary or involuntary.

In the first case, the accession is artificial and in the second, it is natural.

§ - 1 Artificial accession

74 All buildings, plantations and works on or beneath the surface of land are presumed to have been made by the owner of it and with materials belonging to him.

Moreover, the buildings, plantations and works are presumed to belong to him.

75 When the owner of the land erects buildings, plantations and works with materials which do not belong to him, he acquires the ownership of the materials by accession.

The owner of the materials may neither remove them, nor be compelled to take them back.

The owner of the land must refund the present value of the materials, and may also be liable for any damages.

76 Ownership of the land entails ownership of all improvements made to it by a possessor.

"Improvements" means any work that serves to increase the value of the property, especially buildings, plantations, new works and repairs.

77 The owner of the land may not compel the possessor to remove the necessary improvements.

He may not compel the possessor in good faith to remove any useful improvements he has made.

78 A possessor in good faith who is obliged to return a thing is entitled to reimbursement of the cost of the necessary improvements he has made, even if they no longer exist.

If the improvements are useful, and still exist, he is entitled either to reimbursement of their cost or to an indemnity equal to the appreciation, as the owner decides.

79 The possessor in bad faith who is obliged to return a thing is entitled to reimbursement of the cost of the necessary improvements he has made, even when they no longer exist, subject to compensation for fruits collected.

80 The owner is not obliged to keep useful improvements made by a possessor in bad faith; he may compel the possessor to remove them at his own expense and to restore the premises to their original state.

If the owner decides to keep the improvements, he must either repay their cost to the possessor or pay him an amount representing their present value; however, if the improvements cannot easily be removed by the possessor, the owner may retain them without paying him.

81 When the possessor has done works on a property other than those listed in Article 76, the owner may preserve the works without indemnity, or compel the possessor to remove them and to restore the premises to their original state.

82 The rules established respecting improvements made by a possessor in bad faith apply to a holder, unless the law or the act governing such detention provides otherwise.

83 If useful improvements made by a possessor in good faith are so extensive and costly that the owner of the land cannot pay the indemnity provided for, the owner may request

the court to order the possessor to acquire the land and pay its estimated value.

The court takes all the circumstances into consideration.

84 Whenever an owner is obliged to pay an indemnity under the preceding provisions, he may not take back his immoveable until he has executed his obligation.

§ - 2 **Natural accession**

85 Alluvion becomes the property of the owner of the adjacent land, subject to express provision of law.

"Alluvion" means deposits of earth and augmentations which gradually and imperceptibly collect on land adjacent to a watercourse.

86 When ground is left dry by running water imperceptibly flowing away from one shore to the other, the owner of the uncovered shore gains the ground and the owner of the opposite shore may not reclaim anything for the land he has lost.

87 If, by sudden force, a watercourse carries a large and recognizable portion of a riparian field towards a lower field or to the opposite bank, the owner of the portion carried away may reclaim it.

He must, however, on pain of forfeiture, reclaim that portion within one year after the owner of the land to which it has been united takes possession of it.

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

89 If, in forming a new branch, a watercourse cuts an adjacent field and thereby makes an island, the owner of the field retains the ownership of the island so made.

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

Section II

Accession of moveables

91 When moveable things belonging to different owners have been intermingled and united in such a way that they can no longer be separated without causing deterioration, or without excessive labour and cost, the new thing belongs to the person who contributed the most towards its creation.

The value of the work and of the moveable property intermingled or united must be taken into account.

The same applies when a person has worked on or transformed any material which does not belong to him.

92 The owner of the new thing must pay the value of either the material or the work supplied by the other owner.

If it is impossible to determine who has contributed the most towards the creation of the new thing, the persons interested are co-owners in equal shares.

Whenever a person has used materials belonging to other persons, without their consent, he may be ordered to pay damages.

93 A person who is required to give back a moveable thing may retain it, without prejudice to his personal recourse, until the indemnity provided for in the preceding article has been paid.

TITLE FOUR

DISMEMBERMENTS AND MODIFICATIONS OF THE RIGHT OF OWNERSHIP

CHAPTER I

USUFRUCT

Section I

General provisions

94 Usufruct is the right to use and to enjoy the property of another person or a right held by another person, in the same manner as the owner or holder, subject to the obligation of preserving the substance.

Usufruct may be established upon individual things, whether moveable or immoveable, upon rights, and upon universalities.

95 Usufruct is established by contract, by will, by acquisitive prescription or by law.

96 Usufruct is in essence temporary.

97 Usufruct may be established in favour of one beneficiary or of several beneficiaries jointly or successively.

98 The beneficiaries must exist when the usufruct opens.

The usufruct is extinguished when the last beneficiary dies.

Section II

Rights and obligations of the bare owner

99 The sole obligation of the bare owner is to refrain from any act which might prevent the usufructuary from fully exercising his right.

100 The usufructuary takes the thing in the state in which he finds it.

He may not compel the bare owner to remit it in good condition nor can he compel him to make any repairs to it.

101 The bare owner may dispose of his right.

The alienation in no way affects the right of the usufructuary who continues to exercise his usufruct, unless he has formally renounced it.

Section III

Rights of the usufructuary

102 The usufructuary has the possession, use and enjoyment of the thing or the right which is the object of the usufruct.

103 The usufructuary is entitled to use the thing for the purposes for which it is intended.

104 If a usufruct comprises things which cannot be used without being consumed, the usufructuary becomes the owner of them.

Upon termination of the usufruct, the usufructuary must return similar things in the same quantity and of the same quality, unless the act allows him to execute his obligation in money.

105 The usufructuary may dispose, in the manner of a prudent administrator, of things which, although they are not immediately consumed, gradually deteriorate by reason of use and time.

In such cases, at the end of the usufruct, he must restore the value the things had when he disposed of them.

106 The usufructuary owns all fruits yielded by the object of his right.

107 Natural fruits are those spontaneously produced by the soil, and those obtained by cultivation or working of land.

Products and increase of animals are also natural fruits.

108 Civil fruits are sums of money which a thing yields periodically.

In particular, these include rentals, interest, arrears of annuities, dividends and other sums allotted or collected in similar circumstances.

109 Extraordinary profits and payments which may derive from the right subject to the usufruct are not fruits.

They are paid to the usufructuary who must account to the bare owner for them at the end of the usufruct.

110 The usufructuary owns all natural fruits, including those which are attached to the thing at the beginning of the usufruct, as soon as such fruits are separated from the thing.

He is not entitled to those which are still attached to the thing upon termination of the usufruct.

Neither the owner nor the usufructuary is entitled to compensation for any work done or expenses incurred for the production of these fruits.

111 If, at the beginning of the usufruct or upon its termination, the thing is subject to a lease providing that the lessor and the lessee will share the fruits, the lessee retains his right to the fruits until his lease expires.

112 Civil fruits are acquired day by day and belong to the usufructuary from the day when his right begins until that on which it terminates, even if they can be claimed earlier or later.

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

The rules governing usufruct of consumable things apply in this case.

114 The right to increase the capital subject to a usufruct, such as the right to subscribe by preference to shares, belongs to the bare owner and he alone may exercise it.

However, the right of the usufructuary extends to the increase.

If, on the other hand, the bare owner chooses to alienate his right, the capital is remitted to the usufructuary who is accountable for it at the end of the usufruct.

115 Subject to the law or to the act constituting the usufruct, the usufructuary of stock, shares or interests subject to a usufruct is entitled to vote at meetings of shareholders or partners.

However, the bare owner is entitled to vote on any proposed change to the capital structure of the enterprise.

116 The usufructuary may not fell trees growing on the land subject to the usufruct.

He may dispose, however, of those which fall or which die accidentally.

He must replace fruit trees unless most of them have been so destroyed.

117 If the trees were used as a source of income before the usufruct opened, the usufructuary may continue to use them to his profit.

He must do so in such a manner as not to endanger the regrowth of the forest.

He must have the plan for his operation approved by experts. This approval must be ratified by a judge, upon motion.

118 The usufructuary may not extract minerals from the land subject to the usufruct, except for the repair and maintenance of the land.

If, however, the extraction of the minerals constituted a source of income for the owner, before the usufruct opened, the usufructuary may continue such work in the way in which it was begun.

119 While the usufruct lasts, the usufructuary is not entitled to any treasure found on the land subject to the usufruct, unless he finds the treasure himself.

120 If the usufruct bears on an immoveable, the usufructuary exercises all the rights created in favour of the immoveable.

The usufructuary's right relates to all the accessories and everything added to the immoveable by accession during the usufruct.

121 The usufructuary may lease the things comprised in the usufruct or dispose of his right by gratuitous or onerous title.

On termination of the usufruct, the lease granted by the usufructuary becomes subject to Articles 530, 531, 532 and 548 of the Book on *Obligations*.

122 Except when otherwise provided in the act constituting the usufruct, the usufructuary may not claim any indemnity for the improvements he has made, once the usufruct has expired.

He may remove such improvements, however, provided he restores the thing to the state in which he received it.

Section IV

Obligations of the usufructuary

123 Unless he is exempted therefrom, the usufructuary, having notified the owner, must cause to be drawn up, at his own expense, an inventory of the moveables and a statement of the immoveables subject to his right.

A usufructuary who has not complied with this obligation may not require the owner to grant him the things subject to the usufruct; his delay, however, does not deprive him of the right to the fruits from the time the usufruct opens.

124 The usufructuary must furnish security to ensure execution of his obligations; this does not apply to a vendor or to a donor who has reserved the usufruct.

While the usufruct lasts, he must furnish additional security if his obligations increase.

125 If the usufructuary does not furnish security within a reasonable period of time, the bare owner or the usufructuary

may have the moveables and immoveables subject to the usufruct sequestered.

The sequestrator may sell perishable things subject to the usufruct, and invest the proceeds of the sale and any money subject to the usufruct.

The fruits of these investments, and those derived from the sequestrator's administration of the moveables and immoveables subject to the usufruct, belong to the usufructuary.

In every case, the fruits belong to the usufructuary from the moment the usufruct opens.

126 If the moveable property under sequestration includes things likely to depreciate with use, or if the cost of custody or maintenance of the things would be disproportionate to their value, the bare owner may request the court to order them sold, and order that the proceeds be invested and the fruits collected in the manner provided in the preceding article.

The usufructuary may, however, be allowed to have some of the moveables necessary for his personal use left him, provided he undertakes to produce them upon the extinction of the usufruct.

127 The usufructuary must insure the thing against the usual risks, particularly fire and theft, and pay all the premiums for this insurance, until the usufruct expires.

128 The proceeds of the insurance are paid to the usufructuary who gives a discharge to the insurer.

If the thing has been damaged or partially destroyed, the usufructuary must use the proceeds of the insurance to repair or restore the thing.

If the thing has been totally destroyed, the usufructuary

enjoys the proceeds of the insurance, provided he renders an account upon extinction of the usufruct.

129 A usufructuary who is exempted from the obligation to insure the thing may contract insurance on his own account for the protection of his right.

The proceeds of this insurance belong to the usufructuary.

130 When the usufructuary is exempted from the obligation to insure the thing, the bare owner may also contract insurance on his own account for the protection of his rights.

The proceeds of this insurance belong to him.

131 The usufructuary must bear the usual costs of maintenance.

He is also responsible for minor repairs and bears the costs.

132 The usufructuary is not obliged to make major repairs himself, except when they become necessary through his act, particularly when no minor repairs have been made since the opening of the usufruct.

133 Major repairs are those made to the beams and support walls; they also include complete replacement of roofs, dams, prop-walls, fences, and utility systems such as those for heating, electricity and plumbing.

134 When major repairs are necessary for the preservation of the thing, the usufructuary must advise the bare owner.

135 The bare owner is never obliged to make the major repairs.

If he decides to make those repairs, the usufructuary must endure any inconveniences resulting therefrom.

If he refuses, the usufructuary may make them himself and be reimbursed the price, without interest, by the bare owner at the end of the usufruct.

136 The usufructuary is responsible, in proportion to the duration of his usufruct, for all ordinary charges affecting the immoveable subject to his right, particularly land taxes and other annual dues or periodic contributions usually paid out of income.

He is also liable for extraordinary charges, particularly special taxes for improvements and other similar contributions, when such charges or contributions are payable in periodic instalments over a number of years.

137 The usufructuary by particular title of a thing is not personally responsible for the hypothecs which affect it.

Similarly, when the usufruct is constituted by will, the usufructuary by particular title is not obliged to pay any part of the debts of the succession.

If a usufructuary is compelled to pay any of these debts in order to preserve his right, he may require immediate reimbursement from the debtor, or from the bare owner upon extinction of the usufruct.

138 When a usufruct is constituted by will, the usufructuary of the whole succession is responsible for full payment of any annuities or any support established by the testator, and for payment of the interest on all hereditary debts.

The usufructuary of an aliquot share of a succession, or of all or an aliquot share of the moveable or immoveable property is responsible for these payments in proportion only to his share in the succession.

139 The usufructuary by general title must contribute towards the payment of any debts due, along with the bare owner, as hereinbelow provided.

Each must pay the debt in proportion to his share in the succession following an estimate, if need be, of the property of the succession.

The bare owner is responsible for the capital and the usufructuary for the interest.

If the usufructuary wishes to advance the amount required to extinguish the debt, the capital is restored to him by the bare owner without interest, upon termination of the usufruct.

If the usufructuary does not wish to make this advance, the bare owner may either pay the amount, in which case the usufructuary pays him interest on the amount as long as the usufruct lasts, or may cause a sufficient portion of the property subject to the usufruct to be sold.

140 The usufructuary is responsible for the full cost of proceedings relating exclusively to the right of usufruct.

If the proceedings affect the rights of both the owner and the usufructuary, and the usufruct continues after such proceedings, the preceding article applies.

If the usufruct terminates as a result of the proceedings, the costs are shared equally by the usufructuary and the bare owner.

141 If, during the usufruct, a third party encroaches on the thing of the bare owner or otherwise threatens his rights, the usufructuary must so notify the bare owner. If he fails to do so, the usufructuary is responsible for all damages which may result to the bare owner, as if he himself had caused them.

142 Upon extinction of the usufruct, the usufructuary must return to the bare owner all the things to which his usufruct applies, in the state in which they then are.

The usufructuary is liable for any loss or deterioration, unless he proves that the loss or deterioration was not due to his fault or resulted from normal use of the thing.

Section V

Extinction of usufruct

143 Usufruct is extinguished by the death of the usufructuary or, if the usufructuary is a legal person, by its dissolution.

Nevertheless, a usufruct cannot be created in favour of a legal person for a term longer than twenty-five years. If a longer term has been stipulated, it is reduced to twenty-five years.

144 A usufruct created for the benefit of several usufructuaries, either jointly or successively, is extinguished only upon the death of the last surviving usufructuary.

In the case of a joint usufruct, if one usufructuary dies, the entire usufruct subsists for the benefit of the surviving usufructuaries.

145 Subject to Article 143, usufruct is extinguished upon the expiry of the term for which it was granted.

If a usufruct is granted until a third party reaches a certain fixed age, it continues until that date even if that person dies before reaching that age.

146 Usufruct is also extinguished by confusion of the qualities of usufructuary and bare owner; and by application of the rules contained in the Book on *Prescription.*

147 Usufruct is extinguished by the total loss of the thing over which it was established.

If part only of the thing subject to the usufruct perishes, the usufruct subsists upon the remainder.

If an insurance contract is in force, Articles 127, 128, 129 and 130 apply.

148 If a usufruct is established solely upon a building, and that building is completely destroyed, the usufructuary has no right to the ground or to the materials.

If the usufruct is established on land of which the destroyed building formed part, the usufructuary retains his right to the ground and to the materials.

149 If a usufruct is established upon only one animal, and the animal perishes through no fault of the usufructuary, the usufructuary is not required to give another in return, nor to pay its value.

150 If the usufruct is established upon a herd or a flock and the entire herd or flock perishes by reason of accident or disease, through no fault of the usufructuary, the usufructuary must account to the owner only for the skins or their value.

If the herd or flock does not perish entirely, the usufructuary is obliged to replace only those animals which have perished, up to the number of the increase.

151 The usufructuary who commits waste on the thing or allows it to depreciate for want of care, or in any other manner endangers the rights of the bare owner, may be declared to have forfeited his right.

The creditors of the usufructuary may intervene in contestations to ensure preservation of their rights; they may offer to repair the waste and provide security for the future.

The court, according to the gravity of the circumstances, may order absolute extinction of the usufruct or the return of the object of the usufruct to the bare owner, subject to the owner's obligation to pay the usufructuary a fixed sum each year, until the usufruct is extinguished.

CHAPTER II

USE AND HABITATION

152 The right of use is the right to enjoy a thing belonging to another, and to take the fruits of the thing, but only to the extent of the requirements of the user and of his family.

When applied to a house, this right is called a right of habitation.

153 The rules governing usufruct apply to the right of use and to the right of habitation, subject to express provision of law.

154 Neither the right of use nor the right of habitation may be transferred or leased.

155 The rights of the holder of a right of use or of habitation are determined by his own needs and those of his family.

156 The holder of a right of habitation which applies to only part of a building may make use of any facilities intended for common use.

157 The holder of the right of use or of habitation who takes all the fruits of the land or occupies the entire house is fully responsible for the costs of cultivation, for minor repairs and for payment of contributions, in the same manner as a usufructuary.

If he takes only some of the fruits, or occupies only part of the house, he contributes in proportion to what he enjoys.

CHAPTER III

REAL SERVITUDES

Section I

General provisions

158 A real servitude is a charge imposed on one immoveable, called the servient immoveable, in favour of another, called the dominant immoveable, which belongs to a different owner.

Under such charge, the servient owner must tolerate certain acts of usage by the dominant owner, or abstain from exercising certain rights inherent in ownership.

159 When a servitude includes an obligation to do, the obligation can only exist as an accessory.

160 A servitude is not affected by any transfer of ownership of the servient or of the dominant immoveable.

It remains attached to the immoveable, through changes of ownership, subject to the provisions relating to the publication of real rights.

161 A servitude is either continuous or discontinuous.

A continuous servitude is one the exercise of which does not require actual intervention by its holder, such as a servitude of view, of water conduits, or of the prohibition against building.

A discontinuous servitude is one the exercise of which requires actual intervention by its holder, such as a servitude of passage.

162 A servitude is either apparent or unapparent.

An apparent servitude is one the existence of which is manifested by external works.

An unapparent servitude is one the existence of which is not disclosed by any external sign.

Section II

Establishment of servitudes

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

164 A servitude is constituted by destination of owner when the servitude is apparent and it has been proven in writing that the two immoveables currently divided previously belonged to the same owner who established or maintained, between the two immoveables, the physical arrangement which constitutes the servitude.

165 Servitudes created by special law are governed by this chapter, except where there is inconsistency.

Section III

Rights and obligations of the dominant owner

166 The extent of servitudes, and the rights and obligations which derive from them, are determined by the title which establishes them or, if the title is silent, by the rules which follow.

167 Existence of a servitude entails existence of the means necessary for its exercise.

168 The dominant owner may take all measures and do all work necessary for the exercise and preservation of a servitude.

These measures are taken and the work is done at his expense, unless the title establishing the servitude provides otherwise.

169 Where a servient owner is charged by the title with doing the work necessary for the exercise and preservation of the servitude, he may free himself from such charge by relinquishing to the dominant owner all of the servient immoveable or any part of it sufficient for the exercise of the servitude.

170 If the dominant immoveable is divided, the servitude remains due for each portion, without the condition of the servient immoveable being aggravated.

Thus, as regards a right of way, all owners of lots formed by the division of a dominant immoveable must exercise such right over the same place.

The same applies when a dominant immoveable becomes the object of a right of co-ownership.

171 If a servient immoveable is divided, the division in no way affects the rights of the dominant owner.

172 The dominant owner may only make use of the servitude in accordance with his title, but he may not make any change to the servient immoveable or to the dominant immoveable which aggravates the situation of the servient immoveable.

Section IV

Rights and obligations of the servient owner

173 A servient owner may do nothing which tends to diminish the exercise of a servitude or to render it less convenient.

Thus, he cannot change the condition of the premises, nor transfer the exercise of the servitude to a place other than where it was originally assigned.

However, provided the servient owner has an interest in it and does so at his own expense, he may require that the servitude be transferred to another place where its exercise will be as convenient to the dominant owner.

174 The servient owner retains the use of his immoveable, and may perform there all acts of an owner, on the sole condition that he not hinder the exercise of the servitude.

Section V

Extinction of real servitudes

175 A servitude is extinguished when the two immoveables become the property of the same person.

176 A servitude is extinguished by express renunciation by the dominant owner, and by the expiry of the term for which the servitude is established.

177 A servitude is extinguished by extinctive prescription, in conformity with the rules set forth in the Book on *Prescription.*

178 As regards discontinuous servitudes, prescription begins to run on the day when the dominant owner ceases to perform acts in exercise of the servitude.

As regards continuous servitudes, prescription runs from the day when any act is done which prevents their exercise.

179 The manner of exercising a servitude may be extinguished by prescription, like the servitude itself, and in the same way.

180 Prescription runs even when a dominant immoveable or a servient immoveable undergoes a change of such a kind as to render exercise of the servitude impossible.

CHAPTER IV

INDIVISION

Section I

General provisions

181 Property may belong to several persons in undivided ownership.

This condition is called undivided ownership or co-ownership.

182 The shares of co-owners are presumed to be equal.

183 Each co-owner has the rights and obligations of an exclusive owner as regards his share, subject to the restrictions and conditions which follow.

184 The co-owners jointly administer the property.

Decisions concerning administration are made by a majority in value of the co-owners.

Nevertheless, all the co-owners must be in agreement in

order to alienate the thing, to affect it with a real right, or to change its destination.

185 The co-owners bear all administrative costs, taxes and other expenses, each in proportion to his share.

186 The administration of undivided property may be vested in one or more administrators.

187 The administrator is appointed by a majority in value of the undivided owners, saving unanimous agreement of the co-owners requiring a larger majority.

In the absence of such appointment, the administrator may be appointed by the court, for a legitimate reason, on motion by any undivided owner.

188 The administrator may be dismissed by the undivided owners in the same way as he was appointed.

Similarly, he may be dismissed by the court, for a legitimate reason, on motion by any undivided owner.

189 The administrator may perform any act which a majority of the undivided owners may perform under Article 184, except the leasing of an immoveable or a business concern which was not rented at the time the administrator was appointed, or contracting any loan without the authorization of a majority in value of the undivided owners or leave of the court.

With the unanimous consent of the undivided owners, he may alienate the undivided property, affect it with real rights or change its destination.

190 Each undivided owner may make use of the undivided thing, provided he does not affect its destination nor the rights of the other co-owners.

191 The undivided owner may alienate or hypothecate his undivided share, and his creditors may seize it, saving the restrictions hereinafter mentioned.

192 The undivided owner who intends to transfer by onerous title all or part of his share to a person other than another co-owner must, in writing, notify the other undivided owners and the administrator of the price and the conditions of the proposed transfer, and indicate the name and address of the prospective acquirer.

Any undivided owner may advise the transferor, in writing, within one month following the notification, that he is exercising a right of pre-emption at the price and conditions of which he has been advised.

193 If more than one undivided owner exercise the right of pre-emption, each of them may acquire a fraction of the share offered which is proportionate to his interest in relation to that of the others exercising the right.

If the undivided owners fail to avail themselves of the right of pre-emption, the transferor may carry out the proposed transfer, provided he do so within six months of the notification.

194 A transfer made contrary to the preceding articles, by an undivided owner to anyone other than another undivided owner, is null.

The action in annulment may be exercised only by the undivided co-owners.

195 The creditors, even the hypothecary creditors, of an undivided owner may not demand partition except by subrogatory action in cases where the debtor himself may make such application.

He may, however, proceed to seizure and sale of his

debtor's undivided share, and, should the case arise, exercise the hypothecary recourses provided for by law.

In the event of a sale by judicial authority, each undivided owner may avail himself of the right of pre-emption.

196 Any transfer by an undivided owner, either to another undivided owner or to a third party, must be served upon the other undivided owners and the administrator or be accepted by them, in writing, in order to be set up against them.

197 No person is compelled to remain in undivided ownership.

Each co-owner may, at any time, apply for partition; this right is not subject to prescription.

198 However, partition may be postponed by express agreement for a period not exceeding five years. This agreement is renewable.

As regards immoveables, the agreement must be published in order to be set up against third parties.

199 Any agreement or stipulation contrary to the two preceding articles is without effect.

200 If a demand for partition is made at an inopportune time, the court may temporarily order entire or partial continuation of the undivided ownership and make any order it considers necessary.

The judgment continuing undivided ownership in respect of immoveables must be published in order to be set up against third parties.

201 Undivided ownership ends by partition in kind of the thing or by its alienation.

Any act the effect of which is to terminate undivided ownership is considered partition, even though the act is referred to as a sale, an exchange, a settlement or by any other name.

In so far as they are applicable, the provisions of the Book on *Succession* relating to partition govern every partition.

Section II

Particular provisions relating to co-ownership of ships

202 In matters of common interest relating to the equipping, management and manning of a ship, decisions are made by a majority in value of the co-owners, unless otherwise provided in the agreement.

203 If opinion is equally divided as to whether or not a ship will be used, the opinion supporting its use prevails.

204 In the cases provided in the two preceding articles, the owners who objected have the right to claim exemption from liability and to claim an indemnity according to the circumstances, at the discretion of the court.

205 The sale of a ship by licitation may be ordered only if it is demanded by the owners holding at least one-half of the total interest in the ship, unless otherwise provided in the agreement.

Section III

Condominium

§ - 1 General provisions

206 This section governs every immoveable made subject to

it by the registration of a declaration of condominium whereby the ownership of the immoveable is apportioned between its owners in fractions, each comprising an exclusive portion and a share of the common portions.

A person, even acting alone, may register a declaration of condominium and therein declare himself owner of each fraction.

207 Each fraction constitutes a separate entity and may be the object of a total or partial alienation comprising in each case the share of common portions pertaining to the fraction or portion of a fraction alienated.

208 Each co-owner has an undivided right of ownership in the common portions.

His share in the common portions is equal to the value of the exclusive portion of his fraction in relation to the aggregate of the values of the exclusive portions.

209 The common portions and the rights accessory to them cannot be the object, separately from the exclusive portions, of an action in partition or of a forced licitation.

210 The common portions of the immoveable are those which are declared common by the declaration of condominium and, failing contrary provision in the declaration, those are common which are appropriated to the use of all the co-owners, such as the soil, yards, parks and gardens, ways of access, basements, foundations and main walls of buildings, common equipment and apparatus, central heating system, piping and wiring, including that which crosses exclusive portions, the stairs and elevators, passages and corridors and parking and storage places.

211 Partitions or walls separating exclusive portions from other exclusive or common portions and not included in the

foundations and main walls of buildings are presumed common between the premises which they separate.

212 Each co-owner disposes of the exclusive portions included in his fraction.

He uses and enjoys freely the exclusive portions and the common portions provided he does not impair the rights of the other co-owners or the destination of the immoveable.

213 Any co-owner who is disturbed in his rights or in his enjoyment of the premises may act directly against the person causing the disturbance, provided he so informs the administrators in writing.

214 Notwithstanding Article 297, a hypothec existing on the whole of an immoveable held in condominium is divided between each fraction according to the relative value of each of them, as determined in the declaration.

215 Each of the co-owners is bound to contribute, in accordance with the provisions of the declaration or, failing this, in proportion to the relative value of his fraction established in the declaration, to all costs resulting from the condominium and the operation of the immoveable and particularly to the costs of conservation, maintenance and administration of the common portions and to the expenses caused by the operation of the common services.

§ - 2 **Declaration of condominium**

216 The declaration of condominium defines the destination of the immoveable and of its exclusive and common portions, of which it gives a detailed description.

It determines the relative value of each fraction, having regard to the nature, area and situation of the exclusive portion which it comprises, but without taking its utilization into account.

Subject to the provisions of this section, it specifies the conditions of enjoyment of the common portions and utilization of the exclusive portions, and lays down the rules for the administration of the common portions.

217 The declaration of condominium must be in the form of a notarial deed *en minute*; the same applies to the amendments made thereto.

At the time of registration, the declaration must be signed by all the owners of the immoveable and be accompanied by the written consent of all holders of hypothecs registered against the immoveable.

The registration of the declaration and of the amendments thereto is effected by deposit.

218 The declaration and the amendments to it are binding upon the co-owners and their successors by general title.

They are binding upon their successors and transferees by particular title from the date of the registration of their rights.

219 The declaration may not impose any restriction upon the rights of the co-owners except those which would be justified by the destination, characteristics or situation of the immoveable.

220 If justified by the destination, characteristics or situation of the immoveable, clauses prohibiting the alienation of a specific portion of a fraction, or providing that the carrying out of works which may affect the common portions shall be subject to approval by a general meeting, are permitted.

The alienation of a specific portion of a fraction is null if the declaration, the cadastral plan and the book of reference have not previously been amended, with the necessary authorizations, so as to create a new fraction, describe it, assign a

separate cadastral number to it and determine its relative value.

§ - 3 **Administrators**

221 The declaration of condominium must provide for the appointment of one or more persons to act as administrators, and for the mode of their replacement in case of refusal to accept, death, or other cause of vacancy, as long as the immoveable is governed by this section.

When it is impossible to replace them under the terms of the declaration, or when the replacement has not been made, a judge of the Superior Court, upon motion by any interested person, may appoint administrators to replace them, after notice to the co-owners.

The declaration fixes the method of remuneration of the administrators.

222 In the performance of their duties, the administrators are bound to act with prudence and diligence.

223 The instrument of appointment, resignation or removal of an administrator is valid only from the registration of it in the office of the registration division in which the immoveable entrusted to his administration is situated.

The registration is effected by deposit.

However, want of registration of the instrument of appointment cannot be invoked against third parties in good faith.

224 The administrators must render an account of their administration to the co-owners in a general meeting at least once a year.

They must likewise render an account as often as the

declaration or their contract of engagement so requires and also whenever they cease to hold office.

The powers of an administrator do not pass to his heirs or other successors, but the latter are bound to render an account of his administration.

225 The administrators are not personally liable to third parties with whom they contract in the performance of their duties.

226 Subject to the powers of a meeting of the co-owners, the administrators are entrusted with the conservation of the immoveable, the maintenance and administration of the common portions in accordance with their destination, and all measures in the common interest.

227 If they have been duly authorized, acts of acquisition of common portions or other real rights are validly made by the administrators alone and are binding upon the co-owners as if they were parties thereto.

The same applies to acts of alienation or in constitution of real rights.

228 If they are duly authorized, the administrators as such may acquire or alienate exclusive portions by onerous or gratuitous title, and such portions do not thereby lose their characteristics.

They have no vote at general meetings in virtue of exclusive portions acquired by them.

229 The administrators have also the quality to act before the courts, as plaintiff or defendant, even against the co-owners.

230 The administrators are responsible, as such, as well to each co-owner as to third parties, for damage caused by failure

to maintain or by defects in the construction of the common portions, subject to all recursory actions.

231 A judgment condemning the administrators to pay a sum of money is executory against each of the persons who were co-owners at the time when the cause of action arose, in the relative proportion of his fraction, according to the declaration.

232 The administrators, if they deem it expedient, may take out insurance against fire or other risks, including liability towards third parties.

They must do so to the extent provided in the declaration.

§ - 4 **Meetings of co-owners**

233 The co-owners must hold a general meeting at least once each year.

234 The powers of a meeting of the co-owners and the procedure to be followed are determined by the declaration, subject to the provisions which follow.

235 Each co-owner is entitled to a number of votes proportionate to the relative value of his fraction.

236 Failing provision to the contrary in the declaration and subject to the following provisions, co-owners or their mandataries holding the majority of the votes constitute a quorum at meetings, and decisions are taken by the majority vote of the co-owners present or represented at the meeting.

237 Decisions respecting the following matters can be taken only by the vote of at least one-half of the co-owners or their mandataries representing at least three-fourths of the votes:

1. acts of acquisition of immoveables and of partial alienation of common portions;

2. amendment of the declaration or of the plan accompanying it;

3. works involving the alteration, enlargement or improvement of common portions and the apportionment of the cost of such works;

4. reconstruction or repair in case of loss;

5. acts of alienation or acquisition of exclusive portions in the case contemplated by Article 228.

238 Notwithstanding the preceding article, a meeting of co-owners cannot impose upon a co-owner, contrary to the declaration, any change in the relative value of his fraction, the destination of the exclusive portions of his fraction or the use he may make of it.

239 Except by unanimous vote, the co-owners cannot directly or indirectly change the destination of the immoveable.

They cannot, except by unanimous vote, decide upon the alienation of common portions the retention of which is necessary to the destination of the immoveable.

240 Failing provision to the contrary in the declaration:

1. meetings shall be called by the administrators by a notice in writing mentioning the time, place and purpose of the meeting and sent by registered or certified letter to the co-owners at least fifteen days in advance;

2. co-owners are presumed to have elected domicile at the immoveable held in condominium;

3. a special meeting may be called by the co-owners holding one-fourth of the votes at meetings, or by their mandataries;

4. co-owners in undivided ownership of a single fraction must be represented by a single mandatary, who may be one of their number;

5. the appointment of a mandatary must be made in

writing, over the signature of the mandator or of his attorney authorized in writing; if the mandator is a corporation, it must be made over the signature of a person authorized for such purpose, in accordance with a resolution of the corporation.

§ - 5 **Sharing of costs**

241 The amount and due date of the sums necessary to meet the costs of maintenance of the immoveable and for all expenses are fixed by the administrators after consultation with a meeting of the co-owners.

The administrators must notify each co-owner without delay of the amount he must pay.

242 The declaration of condominium may constitute, on each fraction, a hypothec in favour of the administrators to secure payment of sums which are owed to them.

The hypothec may be published, even though the amount of these sums is not mentioned in the declaration.

However, the hypothec is extinguished with respect to a particular sum if, within three months after its exigibility, the administrators have not registered a notice in accordance with Articles 302 and 381.

Any administrator has the quality to register the hypothec and to grant *mainlevée* of it.

243 No co-owner may interfere with the carrying out of works required for the conservation of the immoveable decided upon by a meeting of the co-owners even within exclusive portions.

Nevertheless a co-owner who suffers prejudice by the carrying out of works, either because of a temporary but serious disturbance of enjoyment or because of a permanent

diminution in the value of his fraction, is entitled to an indemnity payable by all the co-owners in proportion to their participation in the cost of the works.

§ - 6 **Miscellaneous**

244 In case of the total or partial destruction of a building, if the decision to rebuild is not made within ninety days, the rights of condominium are liquidated by the distribution among the co-owners of the net proceeds of the sale and the indemnities from insurance taken out by the administrators, in proportion to the value of their respective fractions, less any amount due to the administrators.

245 Each fraction of the immoveable constitutes a separate entity for the purposes of valuation and of levying taxes and assessments, including municipal and school taxes.

The administrators must be impleaded in any judicial contestation by a co-owner respecting valuation of his fraction.

246 Condominium of an immoveable may be terminated by means of a notice which must be signed by all the co-owners and accompanied by the written consent of all holders of hypothecs registered against all or part of the immoveable.

The notice is registered in the same manner as the declaration of condominium.

247 Failing any provision to the contrary in the declaration, the rules relating to judicial partition and licitation of common property apply to the liquidation of the rights of condominium from registration of the notice mentioned in the preceding article or from the expiry of the period mentioned in Article 244.

CHAPTER V

EMPHYTEUSIS

Section I

General provisions

248 Emphyteusis is an immoveable real right resulting from a contract by which the owner of an immoveable transfers it for a period of time to another person, called the emphyteutic holder, who undertakes to make improvements to the immoveable and to pay the owner an annual rent.

249 The term of emphyteusis must be established in the contract.

It must be for more than nine years, but it may not exceed ninety-nine years. This provision is imperative.

250 The holder has all the rights of an owner over the immoveable.

Upon the expiry of the emphyteusis, the owner takes back the immoveable free of all the rights and charges agreed to by the holder.

251 The creditor of the holder may have the holder's rights seized and sold by following the formalities for seizure and judicial sale of immoveables.

The purchaser has all the rights and obligations of the holder towards the owner.

The above provisions apply, inversely and in the same manner, to any adjudication made at the instance of the owner's creditor.

Section II

Respective rights and obligations of owner and holder

252 In matters of warranty, the obligations of an owner are the same as those of a vendor.

253 The holder is bound to pay the owner the annual rent agreed upon.

It may be provided that such rent is payable in instalments.

254 The owner is entitled to the resiliation of the contract if the holder does not pay his annual rent for three years.

255 The holder is responsible for a partial loss of the immoveable; he may not apply for release or for reduction of the rent.

256 The holder is responsible for all taxes and other similar charges affecting the immoveable.

257 The holder must make the improvements to which he has obliged himself.

258 If the holder causes any deteriorations which considerably lower the value of the immoveable, the owner may demand the resiliation of the contract and have the holder ordered to restore the things to their former state.

259 The holder must make all major and minor repairs to the immoveable, and to all improvements which he has made in the execution of his obligation.

260 Resiliation of a contract of emphyteusis by reason of the lessee's failure to execute any of his obligations is governed by Articles 420, 439 and 441.

Section III

Termination of emphyteusis

261 Emphyteusis terminates:

1. by expiry of the period for which it was contracted, or after ninety-nine years when a longer term has been provided for; it is not subject to tacit renewal;
2. by total loss of the immoveable;
3. by resiliation of the contract;
4. by confusion of the qualities of owner and holder, but without prejudice to the rights of third parties.

262 Upon termination of the contract, the holder must restore in good condition the immoveable, and all improvements which he had undertaken to make, unless they have perished by fortuitous event.

263 With regard to useful improvements which were not provided for in the contract, the holder is in the position of a possessor in bad faith.

CHAPTER VI

THE RIGHT OF SUPERFICIES

Section I

General provisions

264 The right of superficies is an immoveable real right which allows the superficiary to be the owner of buildings, works or plantations on an immoveable belonging to another.

265 The immoveable is charged with those servitudes indispensable to the exercise of the right of superficies.

266 The right of superficies terminates:

1. by the total loss of the immoveable which is its object, saving any contrary agreement;
2. by confusion of the qualities of superficiary and owner of the immoveable;
3. by the fulfilment of a resolutory condition;
4. by the arrival of the term, if any.

267 When the right of superficies terminates, and in the absence of any contrary agreement, the superficiary may remove, at his own expense, the buildings, works and plantations, provided he restores the immoveable in its original condition, and he may be required to do so by the owner of the immoveable.

Section II

Construction lease

268 A construction lease carries with it a right of superficies in favour of the lessee of an immoveable when, according to the contract, the lessor allows the lessee to erect constructions on the immoveable and recognizes the lessee's right of ownership in them.

269 The lessee may alone charge, even in favour of third parties, the immoveable he has leased from the lessor with such servitudes as are useful for the purposes of the lease.

These servitudes terminate upon the expiry of the term stipulated in the lease.

270 A construction lease may only be agreed upon for a limited term, which cannot exceed ninety-nine years.

It cannot be prolonged by tacit renewal.

271 The contract must stipulate a rent.

The parties may agree that the lessee will be bound to carry out certain works or constructions with a view to guaranteeing the payment of the rent.

272 The rent may vary during the course of the lease according to the terms stipulated in the contract.

273 The lessor and the lessee each pay the taxes and other charges upon their respective properties.

274 If the constructions are destroyed by a fortuitous event during the course of the lease, the court may pronounce the resiliation of the lease and award indemnities if any.

275 The lessee may transfer his rights under the lease.

TITLE FIVE

SECURITY ON PROPERTY

CHAPTER I

PRELIMINARY PROVISIONS

Section I

Common pledge of creditors

276 Any person who incurs a personal obligation renders liable for its execution all his moveable and immoveable property, present and future, except such property as is declared by law to be exempt from seizure.

277 A stipulation of exemption from seizure in an act by onerous title has no effect.

Likewise, property given or bequeathed upon condition that it be exempt from seizure is seizable, unless, in the opinion of the court, the property is necessary for purposes of support.

278 Moveable property belonging to the debtor which furnishes his principal residence and is intended for household use, save luxury articles, works of art, antiques and collections, is exempt from seizure.

This provision is imperative.

279 When creditors claim together, the price of the property of the debtor is shared rateably, unless there are causes of preference among them.

280 The sole causes of preference are hypothecs.

Section II

Presumption of hypothec

281 No person may assert a right to property in order to secure payment of an obligation, except by way of hypothec.

Any stipulation the effect of which is to preserve or confer a right to property in order to secure payment of an obligation is a stipulation of hypothec.

It may only preserve or confer a hypothec in favour of the creditor, subject to the formalities required for constitution and publication of hypothecs.

282 The preceding article applies regardless of the number, name or nature of any acts made, and notwithstanding the terms used.

Thus, regardless of the conditions, any alienation or lease of property or any other agreement which comes under the preceding article entails transfer of ownership subject to a hypothec in favour of the creditor or, as the case may be, merely confers a hypothec upon him, and any option or obligation to purchase which it may entail is then without effect.

283 The creditor who, under Articles 281 and 282, has only a hypothec may not, by agreement with a third party, prejudice the rights of the grantor in the property if the acts containing the stipulation of hypothec have been registered.

284 Notwithstanding Article 262 of the Book on *Obligations*, no sale is subject to resolution by reason of the purchaser's failure to execute his obligations.

285 Any stipulation inconsistent with this section is without effect.

Section III

Right of retention

286 The holder of moveable property may retain it until he has been paid the costs of preservation and of the necessary repairs or improvements for which he is entitled to reimbursement.

Notwithstanding Articles 281 to 283, there is then no hypothec.

287 The right of retention may be set up against anyone.

Involuntary dispossession does not terminate the holder's right; he may revendicate the property in accordance with the Code of Civil Procedure.

Section IV

The vendor's right of revendication

288 The vendor of moveable property who has not been paid may revendicate the property, subject to the following conditions:

1. the sale must not have been made with a term;
2. the property must be complete and in the same condition;
3. the property must not have passed into the hands of a third party who has paid for it;
4. the claim must be made within thirty days following delivery.

289 The sale of the property in the course of judicial proceedings in revendication has no effect.

The seizure of the property by a third party while the

vendor is still within the prescribed period and the property still complies with the conditions prescribed for revendication does not constitute a bar to the right of the vendor to revendicate it.

In this case, the vendor may also apply for resolution of the sale.

CHAPTER II

GENERAL PROVISIONS

290 A hypothec is a right on property which is made liable for the payment of an obligation, in virtue of which the creditor may follow the property in the hands of whomsoever it may be, and exercise the rights provided for in this Title.

291 A hypothec may only exist in the cases and according to the formalities authorized by this Code.

292 A hypothec is conventional, judicial or testamentary.

293 A hypothec may float.

294 A hypothec is special; it may also be general.

A special hypothec is a charge on specific property.

A general hypothec is a charge on all present and future property in a universality or in the universality of the grantor's property.

It may also be stipulated that it will encumber only present property.

295 A person who cannot sell cannot hypothecate.

296 A hypothec may be granted by the debtor or by a third party.

297 A hypothec is indivisible and subsists in whole upon all the properties made liable, upon each of them and upon each portion of them, even though the obligation is divisible.

A hypothec extends to all subsequent accretions and improvements to, and increases in, the hypothecated property.

298 A hypothec secures the principal and any interest accruing, subject to the restrictions set forth in the Book on *Publication of Rights*, and all costs legitimately incurred.

299 A hypothec may be granted for any obligation whatever.

300 A hypothec is merely an accessory.

Subject to Article 335, it is valid only as long as the obligation the payment of which it secures subsists.

301 A hypothec granted to secure payment of a sum of money is valid even if, when it is granted, the debtor has not received the sum for the payment of which he granted the hypothec, or has received only part of the sum.

This rule applies in particular with respect to the issue of bonds by a corporation and to lines of credit.

302 A hypothec is valid only if the amount for which it is granted and the value of the obligation, for the payment of which the hypothec is granted, are certain and determinate in the act constituting the hypothec.

Nevertheless, the obligation whose payment the hypothec secures may be conditional or of indeterminate value; in the latter case, the creditor may not publish his hypothec except to the extent of the estimated value expressly declared by him at the time the hypothec was granted, or subsequently; the debtor may then, if need be, register a declaration stating the amount of the hypothec according to Article 337.

303 The preceding article does not apply to life annuities or to other obligations assessable in money and stipulated in gifts and wills.

304 Hypothecs may be granted on moveable property, immoveable property, or both together, whether such property is corporeal or incorporeal.

305 A hypothec on property exempt from seizure has no effect.

306 A hypothec affects property from the moment it is granted or, where the grantor is not the holder of the rights he hypothecates, from the moment he acquires such rights.

307 A person who has a conditional right or a right subject to nullity may only grant a hypothec subject to the same condition or nullity.

308 A hypothec granted on the bare ownership extends to the full ownership upon extinction of the usufruct.

The same applies to a hypothec granted by the lessor upon expiry of the emphyteutic lease.

309 A hypothec granted on a thing which belongs to another has no effect unless the grantor subsequently becomes its owner.

310 When a hypothec is cancelled under Article 100 of the Book on *Publication of Rights*, the creditor has a hypothec on the amount he has deposited.

311 A hypothec on shares of the capital stock of a corporation subsists on any shares or other securities received or issued upon redemption, conversion, amalgamation, division, or cancellation of the hypothecated shares, or upon any other change in the shares.

The creditor may not oppose these changes by reason of his hypothec.

In all cases, the creditor in possession of the shares may proceed, by virtue of the hypothec itself, with the necessary formalities.

312 A general hypothec on debts does not extend to any claim which may result from the sale of the debtor's other property by a third party in the exercise of his rights.

Nor does the hypothec extend to any amount paid under an insurance contract on the debtor's other moveable or immoveable property.

313 The provisions in this Title are supplemented by commercial practice and usages where consistent.

CHAPTER III

CONVENTIONAL HYPOTHECS

Section I

Hypothecs on immoveable property

314 A hypothec on immoveable property must be granted, on pain of absolute nullity, by an act in authentic form *en minute*.

However, a hypothec granted in favour of an architect, an engineer, a contractor, a sub-contractor, a supplier of materials, or a workman on an immoveable upon which construction work, demolition, repairs or alterations are carried out by them, may be granted by an act signed in the presence of a notary or in the presence of two witnesses.

315 A hypothec on immoveable property is valid only if the

act granting it specifically designates the property hypothecated in accordance with Article 65 of the Book on *Publication of Rights.*

316 A hypothec on immoveable property carries with it a hypothec on the present and future rents produced by the property and on the insurance covering it.

Publication of a hypothec on rents and insurance, and the rights of creditors relating to collection of moneys, are nonetheless governed by the provisions applicable to hypothecs on debts.

Section II

Hypothecs on moveable property

317 A conventional hypothec on moveable property must be granted, on pain of absolute nullity, in writing.

However, no writing is required when the hypothec is published by giving the creditor possession, unless a third party takes possession on behalf of the creditor.

318 Moveable property which has been hypothecated must be described accurately enough to distinguish it.

319 A hypothec on support, salaries and other remuneration not yet exigible has no effect.

320 A hypothec on any right resulting from a life insurance contract is valid only with the consent of all those holding irrevocable rights therein.

321 When a hypothec is granted on minerals, materials or other things which are an integral part of an immoveable, to take effect only from the time when they exist separately as moveables, the rules relating to hypothecs on moveables apply

provided a notice of the hypothec is registered against the immoveable.

The hypothec affects the property from that moment only, but it ranks from the time of its publication.

322 A special hypothec on future moveable property may be granted only by an artisan, a farmer, a professional, a trader or a corporation, and only if the property is to be used for the purposes of his or its business, operations, establishment, enterprise or profession, or in the cases where the property is the object of it.

Such hypothec may, nevertheless, be granted by any person in favour of a vendor or of a person who grants credit for the purpose of acquiring that moveable property.

323 This Title applies to ships only if, when a right of retention is created or a hypothec is published, the ship subject to such right or hypothec is not registered under the *Canada Shipping Act*, or under equivalent foreign legislation.

324 A hypothec on a ship not registered under the *Canada Shipping Act* or under equivalent foreign legislation does not subsist after the ship has been registered as required in such legislation, unless the hypothec was published before the ship was registered.

325 A hypothec on cargo or freight subsists even if the property is aboard a ship registered under the *Canada Shipping Act* or under equivalent foreign legislation, subject, however, to the rights in the property granted under such legislation.

The same is true for hypothecs granted on the property when it is aboard ship.

Section III

General hypothecs

326 When a general hypothec affects property included in a universality, a description of the mass suffices.

When it affects all of the grantor's property, mention of this fact is considered a description.

However, a general hypothec is published in respect of each immoveable affected only by registration of a declaration in accordance with Article 381.

327 A general hypothec on moveable property may be granted only by an artisan, a farmer, a professional, a trader or a corporation, and only if the property is to be used for the purposes of his or its business, operations, establishment, enterprise or profession, or in the cases where the property is the object of it.

Section IV

Floating hypothecs

328 Until the floating hypothec has crystallized, the grantor may alienate, hypothecate or dispose of the property affected as if the hypothec had not been granted; the conditions or restrictions stipulated in the constituting act, regarding these rights, have no effect except between the parties, even though third parties may have knowledge of them.

However, a bulk sale made by the grantor cannot be set up against the holder of a floating hypothec.

Similarly, the amalgamation or reorganization of a corporation which has granted a floating hypothec may not be set up against the holder of the hypothec.

329 A floating hypothec crystallizes by the intervention of the creditor who, when the debtor fails to execute one of the obligations incumbent upon him by virtue of the agreement or by law, notifies the debtor and the grantor, in the manner set forth in Article 380, as to both the default reproached and the fact of crystallization.

Crystallization is without effect with regard to third parties until the registration of the notice.

330 The floating hypothec ranks only from the time of registration of the notice of crystallization, even though the hypothec has been published.

Nevertheless, the creditor holding a general floating hypothec may, after the registration of a notice of crystallization, exercise the recourse of taking possession by preference over any other creditor who has only published his own hypothec after the publication of the floating hypothec.

331 When property affected by a floating hypothec is seized by a third party, the creditor who holds the floating hypothec may cause his hypothec to crystallize on all the property affected, at any time before the judicial sale.

332 Once a special floating hypothec has crystallized, it carries with it all the effects of a hypothec on any rights which the grantor may still have in the property affected.

333 Once a general floating hypothec has crystallized, it carries with it all the effects of a hypothec on any rights which the grantor may still have to the property included in the universality.

The hypothec remains general, however, and affects property in which the debtor acquires rights after crystallization.

334 Once the debtor's default is remedied, the creditor may cancel the crystallization.

The effects of crystallization cease on the registration of the cancellation.

Section V

Hypothecs securing payment of renewable obligations

335 In cases of lines of credit and in all other cases where the debtor obliges himself anew pursuant to a stipulation in the act constituting the hypothec, the hypothec subsists even after all or part of the obligation is executed, unless the hypothec has been cancelled.

336 If the creditor refuses to lend further sums in accordance with the act constituting the hypothec, the debtor may obtain the cancellation of the hypothec on paying only the amount then owing.

337 In the case of Article 335, the debtor, subject to his other rights, may register a declaration accompanied by a statement of his debt which he may require from his creditor for such purpose, the effect of which is to maintain such debt at the amount then owing and, where applicable, to reduce the amount for which the hypothec was granted.

Section VI

Hypothec on debts

338 The creditor who has a hypothec on a debt collects the fruits yielded by it and imputes them in accordance with the rules in this Title.

The creditor likewise collects and imputes the capital of

the hypothecated debt which becomes due while the hypothec is in existence.

339 The creditor, however, may authorize the hypothecary debtor to collect any capital reimbursements or any fruits from the hypothecated debts as they become due.

340 The creditor then loses his hypothec on the sums which he has allowed to be collected by someone else in accordance with the stipulation or otherwise.

341 The creditor may always withdraw such authorization; he must then serve upon his debtor and upon the debtor of the hypothecated debts a notice to the effect that he will henceforth collect the sums exigible.

The service is made in the ordinary manner or by registered or certified mail, or according to Article 139 of the Code of Civil Procedure.

342 A creditor authorized to collect sums on hypothecated debts grants a discharge for the sums collected.

He is not required to institute proceedings for the recovery of any capital or interest which becomes exigible while the hypothec is in existence, but he must inform his debtor, within a reasonable period, of any default in payment of sums exigible on these debts. Any stipulation to the contrary is without effect.

343 In all cases, the hypothecary creditor or the hypothecary debtor may institute proceedings for recovery, provided he impleads the other.

The action interrupts prescription running against either the hypothecary creditor or the hypothecary debtor.

344 The creditor returns to the hypothecary debtor the sums

collected which exceed the capital of the claim, the interest and the costs incurred.

Any stipulation to the effect that the creditor may retain all or part of those sums is without effect.

345 A debtor who accepts the hypothecation of his debt by his creditor in favour of a third party may no longer invoke against that third party the compensation which he could have invoked against his creditor prior to acceptance.

A hypothec which is not accepted by the debtor, but can be invoked against him, only prevents compensation of the original creditor's obligations that were created after the hypothec could be invoked against him.

Section VII

Memorandum of hypothec

346 In an act constituting a hypothec, the parties may agree to have the debtor's obligation set down in a negotiable instrument, called a memorandum of hypothec.

The agreement may not take place when the publication of the hypothec is to be effected by the putting of the creditor into possession.

The debt mentioned in a memorandum may be transferred only if the memorandum is transferred in accordance with this section.

347 If a hypothec is granted upon moveable property, the constituting act must be in authentic form, *en minute* or *en brevet*; otherwise, the title is not negotiable.

348 The deed *en brevet* may be received in only one original which bears the words "memorandum of hypothec", and the certificate of registration.

349 The notary who receives a deed *en minute* constituting a hypothec on moveable or immoveable property may issue only one copy of that deed, which is deposited for registration.

The copy bears the words "memorandum of hypothec" and the certificate of registration.

350 The notary delivers the memorandum to the creditor.

351 Registration of the deed constituting the hypothec benefits the creditor and all those who, following the last endorsement or the physical possession of a memorandum endorsed to bearer, are holders of claims, without it being necessary to register the transfer of the memorandum.

352 Notwithstanding Articles 348 and 349, the parties may require the notary to issue a number of memoranda to the creditor, each memorandum representing a fraction of the total obligation the aggregate of which is equivalent to the total obligation.

Fractional memoranda must be numbered consecutively; each of them bears the words "fractional memorandum of hypothec" and the registration certificate.

The deed constituting the hypothec and each fractional memorandum must indicate the number of fractional memoranda and the amount of each.

353 The holders of fractional memoranda may only exercise the hypothecary recourse of judicial sale provided for in Articles 446 to 450, unless they all act together in the exercise of other recourses.

The holders are paid in proportion to the value of their respective memoranda.

354 If a memorandum has never been transferred, the

creditor grants a *mainlevée* or a discharge by an authentic deed, on producing the unendorsed memorandum.

If the memorandum has been transferred, only the final transferee of the memorandum may grant the *mainlevée* or discharge. He must then present a memorandum to bearer or a memorandum bearing an uninterrupted series of endorsements, the last of which is in his favour or to bearer.

Upon receiving the *mainlevée* or discharge, the notary, under his signature, enters on the memorandum a reference to the *mainlevée* or to the full or partial discharge, and in the second case, he cancels the memorandum.

355 Cancellation of the hypothec is then obtained upon deposit of the deed of *mainlevée* or discharge, without it being necessary to produce the memorandum.

356 The court, upon motion, may order the notary to issue a second memorandum to the creditor who has established that the memorandum which he holds has been lost, stolen or destroyed.

The court may not grant the motion unless, after the debtor has been impleaded, the creditor has taken, to the satisfaction of the court, all means necessary to guarantee third parties against any consequences which the issue of a second memorandum might have.

The second memorandum must, in addition to what is required by Articles 348 and 349, contain a reference to the judgment ordering its issue, and to the amounts already paid, if any; it must include a mention of the fact that it is not a first memorandum.

If before judgement is served on him, the debtor pays on presentation of the first memorandum, he is discharged.

357 The deed constituting the hypothec must stipulate that

the debt and interest will be paid either directly to the holder of the memorandum or at the place agreed upon in the deed. In the second case, the place may not be changed except with the consent of the interested parties, given in a registered authentic deed referred to on the memorandum.

Where the parties have agreed that all payments will be made at the same place, a receipt from the person authorized to receive the payment may be set up against any holder of the memorandum.

358 No payment made in anticipation to any previous holder may be set up against the holder of a memorandum, unless reference has been made to this on the memorandum.

359 A memorandum is transferred by endorsing it to order or to bearer and remitting it to the transferee, without it being necessary to serve it on the debtor or the possessor of the hypothecated property.

360 The endorsement must be pure and simple; any condition or other modality purporting to affect the endorsement is deemed not written.

A partial endorsement is null, except for an endorsement of the balance outstanding.

361 The transferee in good faith becomes, by the mere fact of the transfer of the memorandum, the holder of the debt described in it and of the hypothecary rights attaching to the debt.

No exceptions or grounds of defence based on relationships between the debtor and a previous holder may be set up against the transferee.

362 The deed constituting the hypothec must contain a stipulation of election of domicile by the creditor.

The domicile so elected applies with respect to all holders of the memorandum, or of fractional memoranda, unless a change is made with the consent of all interested parties and set down in a registered authentic deed, mention of which is made on the memorandum or on the fractional memoranda.

363 Even where payment must be made directly to the holder of a memorandum, legal tender made at the elected domicile, followed by a deposit in accordance with Article 310, constitutes sufficient ground for an application to cancel the hypothec.

364 If the deed constituting the hypothec does not include the particulars required under Articles 357 and 362, or if it is impossible to comply with these articles, the office of the prothonotary of the district where the notary was practising when the deed was signed is the creditor's legal domicile and the place of payment.

CHAPTER IV

JUDICIAL AND TESTAMENTARY HYPOTHECS

Section I

Judicial hypothecs

365 A judicial hypothec is one which results from any judgment rendered by a court which has jurisdiction in Québec, and which orders payment of money.

It extends to any interest and costs, even unliquidated, mentioned in the judgment, subject to the restrictions in the Book on *Publication of Rights.*

366 A judicial hypothec also results from an act of suretyship judicially entered into and from any other judicial act creating an obligation to pay money.

367 A judicial hypothec may affect all of the debtor's moveable and immoveable property, present and future.

It affects the property and takes effect only upon registration of the judgment or deed from which it results and of the declaration provided for in Article 380.

The declaration must also specify the amount of the debt in capital, interest and costs and, in the case of annuities or support, the amount of the payments.

368 However, a judicial hypothec does not affect property subject to a hypothec which can be published only by putting the creditor in possession.

369 In cases of judgment for support, the court may, from time to time, on motion by the owner of the property affected by a judicial hypothec, determine the property or properties on which the judicial hypothec may be exercised, and order cancellation of the registered judicial hypothec at the expense of the applicant.

370 The creditor who holds a published judicial hypothec on property still in his debtor's possession may enforce the resulting preference by executing his judgment in the ordinary manner, notwithstanding Articles 446 to 450 on the hypothecary action.

Section II

Testamentary hypothecs

371 A hypothec created by will on immoveable property is valid even if the will is not in authentic form.

372 A testamentary hypothec affects the property which the testator indicates.

It cannot be general.

373 A testamentary hypothec affects the property at the time of death, but it takes effect with respect to third parties only when it is published.

374 Publication of a testamentary hypothec is effected by registration of the will and, if the property is not sufficiently designated, by registration of the declaration provided for in Article 381 and, where the law so requires, by the putting in possession.

CHAPTER V

PUBLICATION OF HYPOTHECS

Section I

General provisions

375 A hypothec on immoveable property is published by registration.

A hypothec on moveable property is published by the putting in possession, registration, or by both successively, provided the publication is uninterrupted.

A floating hypothec is published in all cases by registration.

376 A conventional hypothec on moveable property is extinguished, however, if it is not published within thirty days after it is granted.

377 A hypothec has effect between the parties even though it is not yet published.

378 The rights arising from a hypothec may not be set up against third parties until it has been published.

Section II

Publication of hypothecs by registration

379 The rules in the Book on *Publication of Rights* apply, except where inconsistent, to the publication of hypothecs.

380 Every notice or declaration presented for registration for the purposes of this Title must bear the signature of the person who draws it up, unless it is an instrument in authentic form, and provide:

1. the names and addresses of the person who draws up the notice or the declaration, the creditor, the debtor and that of the grantor, as the case may be;
2. the date of the notice or of the declaration;
3. the registration number of the deed constituting the hypothec, if applicable;
4. the description of the hypothecated property, in accordance with Article 318 and Article 315, as the case may be;
5. any other information required to make the declaration or the notice conform to the provision under which it is given.

A copy of the declaration or of the notice must be sent to the creditor, to the grantor or to the debtor, as the case may be, by registered or certified mail or by any other means of service.

381 Where a declaration made after the deed constituting the hypothec is required to publish a hypothec, the declaration

must comply with the preceding article and the hypothec is published only when the declaration is registered.

382 When moveable property affected by a hypothec published by registration is transferred, the instrument attesting to the transfer must be registered, except where the sale of the moveable property results in extinction of the hypothec.

Failure to register entails loss of the benefit of term granted by the creditor.

383 Every act of voluntary or judicial subrogation or transfer, conditional or not, of a hypothecary claim must be registered in the same manner and at the same place as the deed constituting the hypothec published by registration.

Unless the hypothec in question is a floating one and not yet crystallized, the debtor must be provided with a copy or extract of the deed of transfer, bearing the certificate of registration.

If these formalities are not fulfilled, the subrogation or transfer has no effect with respect to third parties.

When subrogation is acquired of right, registration is affected by registration of the deed from which it results and of a declaration stating the causes for the subrogation and requiring its registration.

Section III

Publication of hypothecs on moveable property by putting the creditor in possession

384 A hypothec on moveable property may be published by putting in possession either the creditor or, with the grantor's consent, a third party acting for the creditor.

385 Possession by a third party is valid for purposes of

publication only from the moment he receives written evidence of the hypothec.

386 Subject to Article 375, publication of the hypothec subsists only as long as the creditor or the third party retains possession of the property.

387 However, publication is not interrupted by loss of possession which occurs without the consent of the creditor or of the third party, or if the thing is temporarily given back to the grantor or to a third party for purposes of conservation, evaluation, repair, transformation or improvement.

The creditor may revendicate the thing.

This article does not apply in the case of Articles 389 and 394.

388 The creditor who hypothecates a debt secured by a hypothec on property in his possession may transfer possession of the property to his own creditor; the grantor's rights are not affected.

Delivery of the property to the subsequent creditor does not interrupt the previous creditor's possession, provided the previous creditor gives the grantor prior written notice of the remittance; the name and address of the subsequent creditor must appear on the notice.

The first creditor and the subsequent creditor are solidarily responsible for the care of the property.

This article also applies to the sale of a similar debt.

Section IV

Publication of hypothecs on debts and other incorporeal moveable property

389 When a hypothec affects an incorporeal moveable which, according to law, practice or custom, is subject to alienation by endorsement and delivery, or by delivery only, of the title attesting to it, the publication of such a hypothec is effected by the creditor taking possession of the title, except in the case of a floating hypothec before its crystallization.

390 When a hypothec provided for in the preceding article is granted by a trader, it is deemed published, with respect to the grantor's ordinary creditors, when the creditor gives value, even if he has not taken possession of the title.

The hypothec is extinguished, however, if the creditor fails to take possession within ten days after he gives value.

391 The publication of a hypothec on a debt or on a right against a third party is effected by putting the creditor in possession.

The creditor is put in possession by the delivery of a copy or extract of the deed of hypothec to the debtor of the hypothecated debt or right, or by that debtor's written acceptance of the hypothec.

The creditor may also be put in possession under Article 431 of the Book on *Obligations*.

392 However, when a hypothec on debts or on rights against a third party is set out in an instrument negotiable by endorsement and delivery, or by delivery only, the creditor does not acquire possession otherwise than by endorsement and delivery, or delivery only, of that instrument, except in the case of a floating hypothec before its crystallization.

393 When a general hypothec is granted by a trader on debts or rights relating to his business, registration of the deed granting the hypothec by the creditor and, if the hypothec is floating, registration of the notice of crystallization, avails in lieu of the delivery of a copy of the deed to the debtors.

The hypothec is then considered published except as regards any sums paid or otherwise discharged before the notice of the registration is served on the debtors, either personally or under Article 139 of the Code of Civil Procedure or Article 432 of the Book on *Obligations*.

The hypothec ranks from the moment of registration.

394 Furthermore, for purposes of publication, the deed constituting the hypothec must be registered and a duplicate of the certificate of registration must be delivered to the debtor of the hypothecated debt or right, whenever the debt or right is itself secured by a hypothec published by registration.

However, in the case of non-crystallized floating hypothecs, no duplicate of the certificate of registration need be delivered to the debtor.

395 Article 325 of the Book on *Obligations* applies in cases of hypothecs on debts.

Section V

Publication of hypothecs on corporeal things represented by bills of lading

396 The publication of a hypothec on corporeal things represented by a bill of lading, receipt or other negotiable instrument may be effected by delivery of the instrument to the creditor.

If the instrument is not negotiable, publication of the

hypothec is effected in the ordinary manner, either by registration of the deed or by putting the creditor in possession under Article 384.

397 A hypothec published by delivery of the negotiable instrument to the creditor has priority over all hypothecs published subsequently to the issue of the instrument, on the things it represents, unless this hypothec and, if applicable, its registration are noted on the instrument.

398 A hypothec granted by one trader in favour of another on corporeal things represented by a bill of lading, receipt or other instrument is deemed published, with respect to the grantor's ordinary creditors, from the time the creditor gives value, even though the hypothec has not been otherwise published.

The hypothec is extinguished, however, if the creditor fails to publish within ten days after he gives value.

The hypothec ranks from the moment of publication.

399 A hypothec granted by one trader in favour of another on corporeal things represented by a bill of lading, receipt or other negotiable instrument, and published by delivery of the instrument to the creditor, remains published with respect to the grantor's ordinary creditors, even when the hypothecary creditor gives up the instrument.

However, the hypothec is extinguished if the creditor does not regain possession of the instrument, or if the hypothec is not otherwise published within ten days following interruption or abandonment of his possession.

Section VI

Publication of hypothecs on shares of capital stock

400 The publication of a hypothec on shares of the capital stock of a corporation is effected by delivery of the share certificate to the creditor and, if applicable, by his endorsement of such certificate, except in the case of floating hypothecs which have not crystallized and which are published by registration.

401 A hypothec on shares of the capital stock of a corporation may be published even if the creditor has not informed the issuer of the shares of his right of hypothec.

In all cases, however, the exercise of hypothecary recourses is subject to the provisions and agreements governing the transfer of the hypothecated shares.

CHAPTER VI

EFFECT OF HYPOTHECS

Section I

General provisions

402 A hypothec does not divest the grantor or the person in possession of any rights to the property; they continue to enjoy those rights and may alienate them, subject, however, to the rights of the hypothecary creditor.

This provision is imperative.

403 Neither the grantor nor the person in possession may destroy the hypothecated property or cause it to deteriorate by damaging it or by otherwise diminishing its value, except through normal use.

404 In the event of destruction or deterioration, the hypothecary creditor may, in addition to his other recourses, recover from the grantor or the person in possession, as the case may be, all damages resulting from such destruction or deterioration, to the extent of his claim and with the same hypothecary right; any sum so collected is imputed upon his claim.

405 Saving provision to the contrary, the creditor who collects the fruits of and proceeds from the hypothecated property, either according to law or to an agreement between the parties, imputes the fruits and proceeds first on the expenses incurred and on any interest due him, then on the capital of the debt.

Section II

Hypothecary creditor in possession of hypothecated property

406 A creditor in possession of hypothecated property holds it as the administrator of the property of another, entrusted with simple administration.

This provision is imperative.

407 If the creditor has been given possession of the hypothecated property so as to publish his hypothec, the grantor may not obtain the return of the property until he executes his obligation, unless the creditor abuses the property.

The hypothec of a creditor ordered to make restitution subsists, but remains subject to the rules of publication.

Any stipulation inconsistent with the provisions of this article concerning abuse of the property by the creditor is without effect.

408 The heir of a creditor in possession who receives his

portion of the debt may not return the hypothecated property to the prejudice of any coheir who has not been paid.

409 The creditor in possession of the hypothecated property collects the fruits of and proceeds from that property.

If the fruits and proceeds are in cash, he imputes them according to Article 405; if they are in kind, he restores them to the grantor.

410 In the event of redemption for cash, by the issuer, of capital stock of a corporation, the creditor who receives the proceeds imputes them in the same manner.

CHAPTER VII

HYPOTHECARY RECOURSES

Section I

Provisions common to all hypothecary recourses

411 The hypothecary creditor may institute proceedings in declaration of hypothec.

412 When the debtor is in default, the hypothecary creditor may exercise only the following recourses with respect to the hypothecated property:

1. he may take possession of the property in order to administer it and collect any fruits and proceeds it yields;
2. he may sell the property otherwise than by judicial sale to satisfy his claim from the sale price;
3. he may cause the property to be sold judicially to satisfy his claim from the sale price, according to the rank of his claim;

4. he may take the property in payment for his claim.

413 The hypothecary creditor may not exercise his recourses other than taking possession unless the claim is liquid and exigible.

Even if the claim is not liquid or exigible, he may institute proceedings in declaration of hypothec.

414 The holder of a floating hypothec may not exercise his recourses until the hypothec has crystallized.

415 A creditor may exercise his recourses regardless of who holds the property.

416 Where the property is in the possession of a usufructuary, the recourses must be exercised concurrently against the owner of the property and against the usufructuary; otherwise, notice of the recourse must be served upon the party against whom the recourse was not exercised in the first instance.

417 A person in possession who is not personally liable for payment of the debt, and who has taken the property in payment for a hypothecary debt prior to that for which the creditor is exercising recourse, or who has paid prior hypothecary claims, may require that the creditor exercise only the recourse to a sale by mutual agreement or to a judicial sale, and that he furnish security that the property will be sold at a price sufficient to ensure full payment of his prior hypothecary claim.

418 The alienation by the person in possession after registration of the notice of exercise of a hypothecary recourse has no effect against the creditor, unless the acquirer deposits the amount of the debt, interest and costs owed the creditor.

419 The person against whom a hypothecary recourse is exercised may be ordered personally to pay any fruits and

proceeds he has collected following service of the exercise of a hypothecary recourse, and any damages he may have caused to the property from that time, without prejudice to the creditor's right to avail himself of Article 316 in each case.

420 The person against whom a hypothecary recourse is exercised, or any other interested person, may prevent the creditor from exercising his recourse by paying the creditor what is owed him or, as the case may be, by remedying the omission or breach mentioned in the notice of exercise of the recourse, and any other subsequent omission or breach, and by paying the costs:

1. in the case of taking of possession, at any time;

2. in the case of an exercise of the recourse to sell, otherwise than by judicial sale, until sixty days in the case of an immoveable, or twenty-one days in the case of a moveable, have expired after the registration of the notice provided for in Article 432;

3. in the case of taking in payment, before the creditor becomes the owner by virtue of a deed signed voluntarily or by virtue of a judgment;

4. in the case of a judicial sale, at any time before the sale takes place.

In the event of failure to pay a sum of money or to give security, or in the case of the bankruptcy or insolvency of the debtor, the creditor who exercises a hypothecary recourse is entitled to no indemnity except interest and costs.

421 Between hypothecary creditors, he who has a prior rank exercises his recourses in preference to those who rank after him.

422 A person in possession who is not personally liable for payment of the debt, and against whom a creditor exercises a hypothecary recourse, is entitled to retain the hypothecated property for any improvements for which he is entitled to

reimbursement and which have been made by him or by a person from whom he derives his right and who is not personally liable for the hypothecary debt.

423 The creditor whose hypothec affects more than one property may exercise any recourse he deems appropriate on any of such properties, concurrently or in succession.

If, however, all of such properties or more than one of them are judicially sold, and the proceeds are still to be distributed, and if other subsequent creditors hold hypothecs on one of such properties, the creditor's hypothec is divided in proportion to the amount of the respective prices which remain to be distributed.

424 The servitudes and real rights which a third party in possession had on the property when he acquired it, or which he extinguished while he had possession of it, revive after the property is sold or taken in payment.

425 When an undivided part of a property is hypothecated, the creditor who sells otherwise than by judicial sale, or who takes in payment, must, on pain of nullity of his recourse, serve the notice required by Articles 432 and 439 on all the undivided co-owners.

The undivided co-owners who have not remedied the omission or the breach mentioned in the notice within the period provided in Article 433 or Article 439 may not exercise the right of pre-emption provided for in Article 192.

Section II

Taking possession

426 A demand for the taking of possession of hypothecated property is made by a notice sent to the person in possession.

The notice contains a reference to any omission or

breach and to the right of the debtor to remedy them; it has effect with respect to any interested person against whom the rights of the creditor may be set up.

The creditor may obtain possession only if he has registered the notice.

The Registrar must, by registered or certified mail, declare the registration of the notice to each hypothecary creditor whose name is entered in the register of addresses.

427 In the absence of agreement, the taking of possession is ordered upon motion.

428 The taking of possession of hypothecated property results from its surrender to the creditor.

It takes place without prejudice to the rights of the lessee.

429 Without leave of the court, the creditor may not retain possession of the moveable property for more than three months, unless he has exercised one of his other hypothecary recourses during that period.

430 Without leave of the court, the creditor may not retain possession of immoveable property for more than six months, unless he has exercised one of his other hypothecary recourses during that period.

431 The creditor who takes possession of property acts as a simple administrator of the property of another.

Nevertheless, when a general hypothec has been granted on the property of an enterprise or a business, the creditor who takes possession may operate the enterprise or the business without the authorization of the court.

Section III

Sale other than judicial sale

432 The creditor who exercises the recourse of a sale otherwise than by judicial sale must register a notice of his intention to do so, with a certificate of service made upon the person against whom the recourse is exercised.

The notice mentions the omission or breach and the right of the debtor to remedy it; it has effect with respect to any interested person against whom the rights of the creditor may be set up.

The Registrar must, by registered or certified mail, declare the registration of the notice to each hypothecary creditor whose name is entered in the register of addresses.

433 The creditor may not exercise the recourse of selling the property until seventy days in the case of immoveable property, or, in the case of moveable property, twenty-one days, after the notice provided for in the preceding article is registered.

The creditor may not, however, exercise this recourse after the one hundred and eightieth day in the case of immoveable property, or after the ninetieth day in the case of moveable property, following such registration.

Once this period of time has expired, a new notice must be given, in accordance with the preceding article.

434 The purchaser takes the property subject to other hypothecs and real rights which affected it when the notice was registered.

The purchaser becomes personally liable for the other debts secured by hypothecs on the property for which the

person against whom the recourse is exercised is personally bound.

Alienations and real rights granted without his intervention after the date of registration of the notice may not be set up against him even if they have been published.

435 Within eight days after the sale, the creditor must render an account of the proceeds of the sale to the person against whom the recourse is exercised and must return to him any surplus remaining after the debt and all reasonable costs incurred for the sale have been paid.

436 Stockbrokers acting in the normal course of their business are exempted from the formalities provided in Articles 432 and 433.

437 The creditor who sells the property acts as an administrator of the property of another.

He must declare his quality to the purchaser.

438 The creditor is responsible for damages resulting from the fact that his sale of the hypothecated property did not produce a reasonable sum in the circumstances, considering the market value of the property at that time.

Section IV

Taking in payment

439 The creditor who exercises the recourse of taking in payment what is owed him must register a notice of his intention to do so, with a statement of service made upon the person against whom the recourse is exercised.

The notice mentions the omission or the breach, and the right of the debtor to remedy it; it has effect in respect of any

interested person against whom the creditor's rights may be set up.

The Registrar must declare registration of the notice by registered or certified mail to each hypothecary creditor whose name is entered in the register of addresses.

440 The creditor may not exercise the recourse of taking in payment until sixty days in the case of immoveable property, or twenty-one days in the case of moveable property, after registration of the notice mentioned in the preceding article.

441 When this period of time expires, he takes in payment by the effect of the judgment, or of a deed voluntarily made if no notice under Article 444 has been registered or if the notice has been cancelled.

He is deemed to be the owner of the property, in the state in which it then was, from the time the notice was registered.

He takes the property free of all hypothecs published after his own.

Real rights granted without his intervention after the registration of the notice may not be set up against him, even if they have been published.

442 Stockbrokers acting in the normal course of their business are exempt from the formalities provided in Articles 439, 440 and 441.

443 The taking in payment extinguishes the obligation.

The creditor who has taken in payment may not claim from his debtor any payment made to another hypothecary creditor. In such cases, he is not entitled to subrogation against his former debtor.

444 Subsequent creditors or the debtor may require that the

creditor who exercises the recourse of taking in payment abandon it and proceed by a judicial sale, provided that, before expiry of the sixty days or of the twenty-one days contemplated in Article 440, they advance sums sufficient for the discussion and register a motion of their intention to this effect.

445 The creditor must then exercise the recourse of a judicial sale unless he prefers to pay the subsequent creditors who have registered the notice, or unless, in the case where the debtor has registered the notice, the court allows him to take in payment under such conditions as it may determine.

Section V

Judicial sale

§ - 1 Hypothecary action

446 Hypothecs give the creditor the right to have the person who possesses the property ordered to surrender such property in order that it be judicially sold, unless the person in possession prefers to pay the claim and the costs.

447 The third party ordered to surrender property who does not do so within the period of time allowed by the judgment becomes personally liable for the debt.

448 Moveable property is surrendered by remitting it to the sheriff of the district where the proceedings were instituted.

449 Immoveable property is surrendered in the manner prescribed in the Code of Civil Procedure.

450 Judicial sale is made in the manner prescribed in the Code of Civil Procedure.

§ - 2 Discharge of debtor

451 When property has been sold judicially and awarded to a creditor who had a hypothec upon it, the debtor is released from his debt to the creditor, up to the market value of the immoveable property at the time of the adjudication, less any other hypothecary claim which has priority over the purchaser's claim.

452 The preceding article applies to all sales which have the effect of a sheriff's sale.

453 The property adjudicated to a person related to the creditor, particularly a corporation, a partner, a relative of the creditor by blood or by marriage who lives with such creditor, or a relative of the creditor by blood or by marriage up to the second degree, is deemed adjudicated to the creditor for the purpose of the release of the debtor.

454 The same presumption results from any collusion between the creditor and the purchaser with a view to evading the provisions of this section.

455 The released debtor may obtain a discharge from his creditor.

If the creditor refuses to grant the discharge, the debtor may, by motion, request the court to declare his release and obtain cancellation.

456 Release of the principal debtor entails release of his sureties and his warrantors, who may exercise the same rights as the principal debtor, even independently of him.

457 For the purposes of this section, no indemnity, except with respect to interest and expenses, is included in the calculation of the amount owed to the creditor.

Section VI

Imperative provisions

458 Any stipulation contrary to Articles 412 to 415, 417 to 420, 426 to 435, 437 to 441, and 443 to 457 is without effect.

CHAPTER VIII

RANK OF HYPOTHECS

459 Hypothecs on moveable property rank according to the date of their publication, whether by registration or by the putting of the creditor in possession.

However, if two hypothecs are published on the same day, they rank concurrently in proportion to the claims.

460 A hypothec on another person's moveable property which has effect because the grantor later becomes the owner ranks from the date of its publication, subject to the rights of third parties.

However, it ranks after the hypothec granted in favour of the vendor.

461 Hypothecs on immoveable property rank according to the date of their registration or, as the case may be, of the registration of the declaration provided for in Article 381.

However, if two hypothecs are registered on the same day they rank concurrently and in proportion to the claims.

462 Registration of hypothecs on immoveable property is without effect until the grantor's title has been published.

The hypothecs rank from the time the grantor's title is published, but after the hypothec created in the title.

However, as between them, their respective registration dates are taken into consideration.

463 The hypothec granted in favour of a vendor for payment of the sale price ranks before any general hypothec affecting the purchaser's property, even if such hypothec is published on the day of the sale or on the day of publication of the vendor's hypothec.

464 The creditor whose claim is suspended by a condition is nevertheless collocated in his rank, subject, however, to the conditions set forth in Article 716 of the Code of Civil Procedure.

465 The creditor whose claim is undetermined or unliquidated is collocated in his rank, subject, however, to the conditions set forth in Article 717 of the Code of Civil Procedure.

466 A claim with a term becomes exigible when the hypothecated property is sold by judicial sale and is accordingly collocated in its rank.

467 The hypothecary creditor may not ask that the judicial sale be made subject to his hypothec.

468 Transfer of rank must be express.

When it takes place, the order of the hypothecary creditors is inverted according to their respective claims, but in such a manner as not to prejudice any intermediate creditors.

469 Persons subrogated in the rights of a hypothecary creditor enjoy the same right of preference, subject to the rights of the creditor as provided in Article 227 of the Book on *Obligations*.

However, the subrogated party to whom the creditor has

guaranteed payment has preference over the creditor for the amount of the guarantee.

470 Persons subrogated in the rights of the same hypothecary creditor are paid concurrently.

471 Transferees of different portions of a hypothecary claim are paid concurrently; the same applies to the transferor as regards what is still owed him.

However, persons who have obtained a transfer with a guarantee of payment have preference for payment over all the others, and over the transferor, although, among themselves, the date of service of their respective transfers must be taken into consideration.

CHAPTER IX

EXTINCTION OF HYPOTHECS

472 A hypothec is extinguished by the total extinction of the obligation the execution of which is secured by it, subject to Article 335.

473 A hypothec is extinguished by the expiry of the term for which it was granted.

474 A hypothec on immoveable property is extinguished twenty-five years following the date of registration of the deed which granted it, gave it effect or extended it, unless registration was renewed prior to expiry of that period.

475 A hypothec on moveable property published by registration is extinguished five years following the date of registration of the deed which constituted it, gave it effect or extended it, unless, before that time, the registration is renewed or the hypothec published in some other way.

This article does not apply to floating hypothecs nor to the hypothec on rents and on insurance contemplated in Article 316.

476 A hypothec on moveable property is extinguished if it ceases to be published.

However, it revives if it is published again, but ranks only from the time of that publication.

477 A hypothec is extinguished when the hypothecated property is totally lost, when its nature is changed, or when it is no longer an object of commerce or is expropriated.

However, the hypothec revives on the whole or part of the expropriated immoveable which again becomes the property of the owner from whom it was expropriated.

478 A hypothec is extinguished by confusion of the qualities of hypothecary creditor and that of owner of the hypothecated property.

It revives, however, if the confusion ceases for any cause independent of the creditor.

479 A hypothec is extinguished when the moveable property which it affects is acquired in good faith, at wholesale or at retail, from a trader who deals in similar goods, in the ordinary course of his business, even though the hypothec is published and the purchaser was aware of it.

In such cases, the debtor loses the benefit of the term only if the deed constituting the hypothec so provides.

480 If the hypothec so extinguished was not granted by the trader, he may then be sued for damages, unless he could not have known of the existence of the hypothec.

Those damages, which are imputed on his debt, consist

of the lesser of the value of the hypothecated property sold or of the amount of the hypothecary debt.

481 A floating hypothec not yet crystallized on the property is extinguished when the grantor alienates the property under the first paragraph of Article 328.

482 A hypothec is extinguished by judicial licitation, by sheriff's sale or by any other sale which has the effect of a sheriff's sale.

483 A hypothec on an undivided part of a property subsists only in as much as, by partition or any other declaratory act of ownership, the grantor or his legal representative retains rights to some part of the property, subject to the Book on *Succession.*

484 A hypothec is extinguished by novation of the principal obligation unless the creditor has expressly reserved it, in which case the hypothec secures the execution of the new obligation.

485 A hypothec is extinguished, with regard to the property of the former debtor, when a new debtor is substituted for him, by way of novation, unless the creditor has reserved it with the consent of the former debtor.

When there is novation between the creditor and one of the solidary debtors, the hypothec of the former debt may be reserved only on the property of the codebtor who contracts the new debt.

486 The hypothec of a subsequent creditor is extinguished by the registration of the deed or the judgment contemplated in Article 441.

TITLE SIX

ADMINISTRATION OF THE PROPERTY OF OTHERS

CHAPTER I

MODES OF ADMINISTRATION

Section I

Preliminary provisions

487 A person may have, with respect to the property of others, the obligations and powers arising from:

1. custody of the property of others;
2. simple administration of the property of others;
3. full administration of the property of others.

488 The person whose property is kept in custody or is administered is called the beneficiary.

489 Property of others which is subject to administration includes property acquired in replacement of the original property, or as an accessory, and the fruits and income.

490 The custody or the administration of the property of others may be gratuitous or onerous.

491 In the absence of any provision of law or of an act under which custody or administration is gratuitous, the custodian or administrator is entitled to a remuneration determined by the act or, in the absence of any such provision, by the value of the services rendered or by usage.

Section II

Custody of the property of others

492 Custody of the property of others obliges the custodian to preserve the property and return it to the beneficiary.

493 The custodian must perform all acts necessary for the preservation of the property.

494 The custodian must return to the beneficiary the identical property of which he had custody.

He is not responsible, however, for any loss or deterioration of the property by reason only of its perishable nature.

495 The custodian is not responsible for any change or deterioration in the property by reason of its decrepitude or of a fortuitous event, or resulting from normal use.

496 The custodian is not bound to collect any fruits yielded by the property, or any debts due.

497 The property is returned to the beneficiary on demand, unless another period is fixed by the act or by law.

498 The property is returned at the place where it was taken into custody.

The cost of transportation is borne by the beneficiary, unless the custodian is remunerated.

Section III

Simple administration of the property of others

499 Simple administration obliges the administrator to perform, in addition to those that are necessary, any acts that

are useful for the preservation of the property in a good state of repair and use for the purposes for which it is intended.

500 The administrator charged with simple administration exercises the rights attached to the property administered.

He collects all debts subject to his administration and gives a valid discharge for them.

501 The administrator is not obliged to make improvements to the property or to make it productive, except as regards sums not required for disbursements.

502 The administrator is bound to collect the fruits yielded by the property.

503 The administrator must continue the use for which the property which yields the fruits is intended, without changing its destination.

However, if the property administered includes a commercial or other enterprise, the administrator may not operate it without express authorization from the beneficiary or, failing this authorization, by the court on motion.

504 The administrator may perform acts of disposition by onerous title and, in particular, create a hypothec when funds are insufficient to pay the debts.

With the express authorization of the beneficiary or, failing this, of the court on motion, he may also do so when this is required to maintain the value of the property or to keep the property in a good state of repair or operation.

505 The administrator may also perform acts of disposition by onerous title when the property is perishable by nature.

506 The administrator may make investments and change them.

Section IV

Full administration of the property of others

507 Full administration imposes upon the administrator, in addition to the obligations pertaining to simple administration of the property of others, the obligation to make the property productive.

508 The administrator may dispose of the property of others by onerous title, or affect the property if he considers this necessary or useful in the interests of the beneficiary, even if the property is a commercial or other enterprise.

CHAPTER II

RIGHTS AND OBLIGATIONS OF THE ADMINISTRATOR

509 Any person who acts as an administrator or an officer, under any title, or even without any right or without authorization by law, assumes the responsibility of an administrator of the property of others.

510 A person who acts as an administrator of the property of others, even if he had been placed under a protective regime, cannot plead his incapacity or invoke any lesion appropriate to his status to diminish his liability.

511 An administrator, on motion, may obtain instructions from the judge when a reasonable doubt subsists as to the nature or extent of his powers and obligations.

512 An administrator must act, honestly and in all loyalty, in the exclusive interest of the beneficiary.

However, an administrator who is also a beneficiary is

not bound to subordinate his interest to that of the other beneficiaries.

513 An administrator must act with prudence and diligence in the administration of the property of others.

The administrator who is appointed by reason of his professional competence must act in accordance with usage and the rules relating to his occupation.

514 An administrator may not exercise in his own interest powers which he must exercise in the interest of others.

515 The rights and obligations of an administrator are not changed by the mere fact that he may have an interest in the property being administered.

516 Any provision or stipulation intended to relieve an administrator from the duty to act in accordance with the law, or to exempt him from any liability in the event of inexecution, is without effect.

517 An administrator is bound to make inventory, to furnish security or to take out liability insurance only if so required by law or by the act.

However, where the circumstances justify it, a beneficiary, on motion to the court, may have the administrator compelled to make an inventory, to furnish security or to take out liability insurance.

518 Moreover, an administrator may have himself exempted from making an inventory, furnishing security or taking out liability insurance when the act obliges him to do so.

519 An administrator may, at the expense of the beneficiary and to his own benefit, take out insurance against the liability he incurs in his quality under the first paragraph of Article 513.

520 An administrator is bound to insure the property, at the expense of the beneficiary, against ordinary risks, especially fire and theft.

521 The administrator must declare to the beneficiary or, if the beneficiary is a minor or a person of major age under tutorship, to the Public Curator any interest which he has in the property being administered, unless the interest results from the act which gave rise to the administration or unless it has been published prior to the commencement of the administration, in accordance with the provisions of the Book on *Publication of Rights.*

522 Unless authorized by law, an administrator may not acquire any rights in the property he administers, except by way of succession, nor may he transfer to the beneficiary, except by gratuitous title, property in which he holds rights under any title.

This prohibition applies whether the acquisition or the transfer is made directly or indirectly.

The beneficiary alone may invoke nullity of the act.

523 However, an administrator may be authorized by the court, on motion, to acquire a right in the property administered or to transfer to the beneficiary any property which he himself owns, provided he proves that he would thus act in the interest of the beneficiary.

Even though he is authorized, an administrator who has concealed any relevant fact from the court remains accountable for any profit he subsequently realizes.

524 An administrator responsible for entering into a contract may not be a party to it, unless so authorized by law.

Only the beneficiary may apply for the nullity of the contract.

525 An administrator may not become the transferee of any right against the beneficiary.

The beneficiary alone may invoke the nullity of the act.

526 An administrator may not mingle the property administered with his own, subject to express provision of law.

527 An administrator may not use for his benefit, directly or indirectly, the property which he administers, or use any information which he obtains in his quality, unless the beneficiary has expressly consented to its use or unless it results from the law or from the act establishing the administration.

528 An administrator may not, under pain of absolute nullity, dispose gratuitously of the property entrusted to his administration, except in the case of moderate sums in the interest of his functions.

529 An administrator may sue and be sued with respect to all that concerns his administration.

He may also intervene in any suit relating to the property administered.

530 The administrator must keep a detailed account of all dealings effected in his quality of administrator.

531 The administrator accounts to the beneficiary for his management at least once a year if the administration lasts longer than one year.

The account is summary unless the act or the law requires that it be detailed.

If there is contestation, the court on motion may authorize the beneficiary to examine the books relating to the administration.

532 If there are several beneficiaries of the administration, concurrently or successively, the administrator must act impartially with respect to them, taking account of their respective rights and of the provisions of the act and of the law.

533 Allotment of the benefits among beneficiaries of income and of capital is based on generally accepted accounting principles.

534 The income beneficiary is entitled only to the net income of the property administered.

535 "Income" means property derived from the use of capital.

In particular, it includes:

1. natural and civil fruits;
2. sums received in consideration for annulment or renewal of a lease or as an advanced payment;
3. net profits realized on the operations of a commercial or other enterprise;
4. dividends and distributions debited to the income of corporations and trusts, subject to the following article;
5. rights or options to purchase securities in a corporation or trust other than that granting such right;
6. the option to receive a dividend payable in money or in shares, whatever the manner of distribution selected under the option;
7. any amount exceeding the issue price of a bond or other debt payable in cash when the surplus is determined according to tables based on the lapse of time.

536 "Capital" means the administered property that is held for the capital beneficiary and which can be used in the meantime for the benefit of the income beneficiary.

In particular, it includes:

1. proceeds from any disposal or redemption of capital, and any property acquired in replacement of capital;

2. expropriation indemnities and insurance proceeds with respect to capital, except to the extent that the amount corresponds to the share of the income beneficiary;

3. shares of the capital stock of a corporation, including stock dividends, and the right to subscribe for shares of that corporation;

4. property distributed by a corporation to its shareholders upon amalgamation, re-organization or winding-up, unless the corporation indicates that such property is a dividend or income;

5. any other distribution of property by a trust or a corporation, including that debited to profits in general, to amortization or to depletion;

6. bonds and other certificates payable in cash, in accordance with the value set forth in the inventory made by the administrator; no reserve is made as regards amortization of premiums or recovery of the discount on such certificates;

7. losses suffered on the operations of a commercial or other enterprise during a fiscal year;

8. apportionment of depreciation determined according to Article 538.

537 The administrator imputes either to income or to capital the expenses incurred in the administration.

538 The following expenses, and others of like nature, are imputed to income:

1. ordinary expenses of administration, annual or periodic taxes and assessments, insurance premiums and minor repairs;

2. a reasonable allowance for depreciation of depreciable

property, except with regard to property utilized for the personal use of the beneficiary;

3. one-half of the cost of judicial accounting, unless the court orders otherwise;

4. the costs incurred to protect the rights of income beneficiaries, unless the court orders otherwise;

5. one-half of the usual remuneration of the administrator as well as of all reasonable expenses incurred in the regular joint administration of capital and income;

6. income tax payable by the administrator;

7. expenses relating to putting the property up for lease.

539 The administrator may spread substantial expenses over a reasonable period of time, by means of reserves or otherwise, in order to maintain the income at a regular level.

540 The following are imputed to capital:

1. any expenses, allowances, costs and remuneration not imputed to income under Article 538, including expenses incidental to capital investment, expenses related to putting property up for sale, and costs incurred to protect the rights of the capital beneficiary and the right of ownership of the property administered;

2. taxes on gains, profits and other amounts attributable to capital, even if the law governing such taxes considers them as taxes on income;

3. any succession tax or duty which affects the property administered, even if the beneficiary of the income also has rights in the capital.

541 The income beneficiary is entitled to the income from the date determined in the act or, if no time is so determined, from the beginning of the administration or, in the case of succession, from the date of the death.

542 In the case of succession, debts due to the succession but not paid on the date of the death are considered capital.

543 Income payable periodically and fruits are counted *per diem.*

Those earned prior to death are allotted to capital.

In all other cases, fruits collected are allotted to income, even if they are earned prior to the beginning of the administration.

544 Corporate dividends and distributions are counted from the date fixed by the corporation as the date of record for registered shareholders or, failing this, from the date the distribution is declared by the corporation.

545 Expenses of administration are imputed in the same manner as with respect to income.

546 Upon expiry of his rights, the income beneficiary is entitled to:

1. any income which has not been paid to him;
2. the portions of income earned but not yet collected by the administrator; the income is counted *per diem.*

547 Profits of corporations not distributed while the right of the income beneficiary exists are not considered income.

548 An administrator of the property of others who acts, in the performance of his duties, as a director of a corporation must, in fulfilment of Article 512, act above all in the interests of the corporation.

Over and beyond these interests, however, he remains subject to the rule in Article 532 with respect to income and capital beneficiaries.

549 If the property administered includes property which is consumed or which depreciates by reason of single or repeated use or by the passage of time, the administrator, failing indication to the contrary in the act or failing the consent of the capital beneficiary, must either establish a reserve for depreciation of capital or dispose of the property.

550 The administrator, failing indication to the contrary in the act, or failing the consent of the income beneficiary, must dispose of any property which yields no income or yields income clearly less than the current yield on investments, and which is not likely to yield more in the future.

CHAPTER III

INVESTMENT OF THE PROPERTY OF OTHERS

551 An administrator of the property of others may not make any investment other than those enumerated in this chapter, unless expressly authorized to do so by law or by the act.

552 Investments in the following property are presumed sound:

1. 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 states, by the International Bank for Reconstruction and Development, by a municipal or school corporation in Canada, or by a *fabrique* in Québec;

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

3. bonds or other titles of indebtedness secured by the transfer to a trustee of an undertaking by the government of Québec, of Canada or of a province of Canada

to pay sufficient subsidies to meet the interest and capital on maturity;

4. bonds or other titles of indebtedness issued by a corporation incorporated in Canada:

a) if they are secured by hypothec ranking first on immoveable property and equipment, or by hypothec of titles of indebtedness permissible as investments under this article;

b) if they are secured by hypothec ranking first on equipment and the corporation has paid in full the interest on its other debts during the ten years preceding the acquisition; or

c) if the common shares of the corporation are listed on a recognized Canadian stock exchange and 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;

5. debts secured by hypothec on immoveable property in Canada:

a) if payment of the capital and interest is guaranteed or assured by the government of Québec, of Canada or of a province of Canada; or

b) if the hypothec ranks first and the amount of the debt is not more than seventy-five per cent of the value of the property securing payment of the debt;

6. bonds or other titles of indebtedness issued by a loan society incorporated by a statute of Québec or authorized to do business within Québec under the *Loan and Investment Societies Act*, if it has been specially approved by the government for the purposes of this paragraph, 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 immoveable property situated in Québec;

7. immoveable property in Québec;

8. fully paid preferred shares, issued by a corporation incorporated in Canada:

a) if the corporation which issued them 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;

b) if, during each of the five years preceding the acquisition, the corporation earned and paid on its common shares a dividend of at least four per cent of their book value; and

c) if the preferred shares or the common shares of the corporation are listed on a recognized stock exchange in Canada;

9. fully paid common shares issued by a corporation incorporated in Canada and listed on a recognized stock exchange in Canada, if the corporation which issued them 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.

553 The administrator may not invest in shares of corporations more than thirty per cent of the total value of the property which he administers.

Moreover, he may not acquire more than five per cent of the shares of the same corporation, or acquire shares, bonds or other titles of indebtedness of a corporation which is in default to pay the prescribed dividends on its shares or the interest on its bonds or other securities, nor may he make a loan to such a corporation.

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

555 An administrator may deposit the money in a bank, savings bank, trust company or savings and credit union, if the deposit is repayable on demand or upon notice of not more than thirty days.

556 An administrator may continue to hold the investments of which he took possession when he took office, even if they are not in accordance with the provisions of this chapter.

557 An administrator who has conformed to this chapter is not released from his obligation to act in accordance with Article 513.

CHAPTER IV

RESPONSIBILITY OF THE ADMINISTRATOR

558 A remunerated administrator is liable for any damage resulting from his administration, unless he proves absence of fault on his part.

559 An unremunerated administrator is responsible for any damage resulting from a fault committed in the execution of his duties.

However, the court may reduce the damages according to the circumstances.

560 An administrator is liable for losses resulting from an investment which he was not authorized to make.

561 An administrator who makes use of the property of another person when not entitled to do so, is bound, apart from damages, to compensate the beneficiary by paying, where applicable, an appropriate rent or by replacing the property used or by paying the interest on the money from the date when it was used.

562 An administrator may not, by general delegation, entrust his duties or the exercise of any discretionary power to any person other than his co-administrators, unless expressly authorized in the act or by law.

However, he may have himself represented by a third party for specific acts, subject to the act or to law.

563 If an administrator has someone substitute for him or delegates his powers, this does not have the effect of discharging him of his responsibility.

The administrator and the person who substitutes for him in the exercise of his duties are solidarily liable towards the beneficiary, whether or not the beneficiary has authorized the replacement.

564 The administrator is responsible for the person who substitutes for him in the exercise of his duties, when he is not authorized to effect the substitution.

An administrator empowered to have someone substitute for him is also responsible if the person substituting for him is known to be incompetent.

In addition, the beneficiary has an action against the person substituting for the administrator.

565 A beneficiary may not repudiate any act performed by a person who has substituted for the administrator unless he has suffered prejudice as a result and unless the substitution is prohibited by the act or by usage.

The administrator is responsible for any act performed by the person substituting for him when there is repudiation by the beneficiary.

566 When several administrators have been jointly entrusted with the same matter, they are solidarily responsible for all obligations arising from their administration.

When one of them is empowered to act with respect to certain acts, he alone is responsible for them.

567 When there are several administrators, a majority of them may act, subject to any express provision of law or in the act.

When the administrators disagree with regard to a particular act, a dissenting administrator is exonerated from the responsibility arising from such act if he notifies the beneficiary of his disagreement within seven days after the majority decision or, if the decision is made in his absence, after the time he learns of it.

If minutes are taken of the deliberations, the administrator must require that his dissent be recorded.

The administrator who has agreed to the decision, or who has not fulfilled the requirements of the second and third paragraphs of this article, may not be exonerated from his responsibility.

568 When the act stipulates that administrators must act together, a judge, on motion, may exempt them from so doing, and make any order he sees fit.

If there are only two administrators, they must act together, unless otherwise ordered by the judge.

569 When the administrators cannot act by reason of opposition by one of them, the court, on motion, may replace the decision of the opposing administrator by its own.

Before rendering any decision, the court may consult with the beneficiaries.

570 An administrator is not personally responsible towards third parties when he binds himself in the name of the beneficiary and within the limits of his duties.

571 An administrator is responsible towards third parties when he acts in his own name, without prejudice to any of their rights against the beneficiary.

572 The beneficiary or, at his death, his legal representatives, is responsible for acts performed after termination by the administrator in the performance and within the limits of his duties, when the acts are a necessary consequence or are required to prevent loss or damage.

573 A person who has given reasonable grounds for believing that another person was the administrator of his property is responsible, as if there had been administration, towards any third party who has contracted in good faith with that other person.

CHAPTER V

TERMINATION OF ADMINISTRATION

574 An administrator, for valid reasons, may resign from the administration which he has accepted by giving written notice to that effect to the beneficiary and, where applicable, to his co-administrators and to the person empowered to appoint an administrator in his place.

If none of the persons mentioned in the preceding paragraph can be found, or if it is impossible to give them notice, the notice must be given to the Public Curator.

575 Resignation by an administrator takes effect on the day the notice is sent or on any date indicated in the notice, whichever is later.

576 An administrator is responsible for any damage caused by his unjustified resignation.

An administrator is also responsible, notwithstanding any stipulation to the contrary, for any damage caused by his resignation when the resignation amounts to inexecution of his obligations under Articles 512 and 513, either because of his acts, or because of the knowledge he had of acts of third parties.

The court, however, may reduce damages according to the circumstances, if the administration is gratuitous.

577 When the act prevents the administrator from abandoning his duties, he may nevertheless be released with the consent of the beneficiary or by leave of the court.

578 The functions of an administrator terminate:

1. when either party is placed under a protective regime, or by reason of insolvency or bankruptcy, or for any other cause affecting the capacity of either party; and
2. by termination of the power or right of the beneficiary.

579 An administrator must resign from his duties when he no longer fulfils the conditions required by the act or by law.

580 A remunerated administrator who resigns is entitled to the value of the services he has rendered.

He must return any advances received in excess of his remuneration.

581 A beneficiary may terminate the administration or dismiss the administrator at any time, subject to express provision of the act or of law.

582 The court, on motion by any interested person may dismiss an administrator who squanders or damages the

property of others, abuses it, refuses or neglects to execute his obligations, or infringes them.

The same applies where he is incompetent or is not fit to execute his obligations.

583 When an administrator is dismissed, the beneficiary must pay him, in addition to any expenses incurred in the performance of his duties, all remuneration which he has earned and any damages which may be due for dismissal without reasonable grounds.

584 Acts performed by an administrator who is unaware that his administration has terminated remain valid.

585 Administration is terminated by the death of the administrator.

The office of administrator is not transmitted to his heirs, although they must render an account of his administration and return the property administered to whoever is entitled to it.

586 The administrator's heirs who are aware of the administration and are not prevented from acting must notify the beneficiary or the co-administrators of the administrator's death.

They are also bound to do all that is immediately necessary, in matters already under way, to prevent any loss.

CHAPTER VI

RENDERING OF ACCOUNTS

587 Upon termination of his administration, the administrator is bound to render a final account of it to the beneficiary.

The account may be summary if the act so stipulates or if the beneficiary is in agreement.

588 When there are several administrators, they are bound to render only one account, unless their duties have been divided under the act and each one has performed only the duties assigned to him.

589 When the administrator's annual or final account is rendered, any interested person may apply, by motion, to the court for an order either to have the account audited under the rules set out in Articles 414 to 425 of the Code of Civil Procedure, or to have the account rendered under Articles 532 to 539 of the Code of Civil Procedure.

590 The expenses incurred by the administrator by reason of the administration are borne by the beneficiary.

591 The administrator must transfer or return the property administered to the beneficiary.

592 The administrator must restore to the beneficiary all that he has received in the performance of his duties, even if what he has received is not due to the beneficiary.

593 The administrator must also account for anything which he has neglected to collect from third parties, and anything which he has paid without right to third parties.

594 An administrator may deduct what the beneficiary owes him by reason of the administration.

595 The administrator accounts to the beneficiary for any gain or personal benefit which he realizes, directly or indirectly, through the use of information to which he has access by reason of his duties, without prejudice to any damages.

596 The administrator is entitled to retain any moveable

property which he administers, until he is paid what is owed him by reason of his administration.

597 The administrator owes interest on any balance of money from the time he is put in default.

598 The beneficiary owes the interest on any advances made by the administrator in execution of his duties, and on the balance, from the day he is put in default.

599 If there are several beneficiaries, their obligation towards the administrator is solidary.

TITLE SEVEN

TRUSTS

CHAPTER I

GENERAL PROVISIONS

600 An act by which a person transfers property to be held either for the benefit of a person or for the fulfilment of a purpose of public or private interest constitutes a trust.

601 A trust may be established by contract or by will.

It must comply with the rules governing the substance and form of such acts.

602 The trust must be accepted by the trustee or, if there are several trustees, by one of them.

Where there is testamentary trust, the trustee's acceptance is retroactive to the time of the death.

603 Property transferred in trust constitutes a patrimony which is distinct from that of the trustee.

The act governs the use to be made of the property of the trust and of the fruits and income of that property.

604 The words "in trust" in any instrument or document may mean, according to the circumstances, either the constitution of a trust or the carrying out of any other purpose.

605 A trust for a purpose of public interest may be established for any purpose of charity or of general interest.

606 A trust may be established for a purpose of private interest, particularly for the maintenance of a thing, provided the act establishing the trust identifies the purpose sufficiently.

607 A trust constituted by onerous title for the purpose of profit or to ensure retirement or any other benefit to the grantor, the members of an association, the employees of an entreprise, or a group of shareholders, is likened to a trust for a purpose of private interest.

Persons entitled to receive payments under such a trust have the rights and recourses of beneficiaries under this chapter.

CHAPTER II

TRUSTEES

608 The act creating a trust must appoint at least one trustee.

609 A minor or a person of major age under tutorship or curatorship may not be a trustee.

610 A grantor or a beneficiary may not act alone as trustee.

611 Acceptance of the office of trustee is express or tacit.

612 The act may provide for the replacement of the trustees, or may indicate the manner in which the replacement must be made.

When it is impossible to replace a trustee in the manner specified in the act, the judge, on motion, may provide for the replacement once the persons the judge indicates have been notified.

The same applies when the trustee appointed by a will does not accept his office.

CHAPTER III

BENEFICIARIES

613 Any person who can re
beneficiary of a trust by gratui

However, the donor may reserve for himself the right to receive the fruits and income of the property placed in trust or, eventually, the capital.

614 The act establishing a trust for the benefit of a person must designate or otherwise sufficiently identify the beneficiary.

615 The beneficiary of a trust established by gift or by will must have the required qualities to receive at the time his right opens.

Similarly, if there are several successive beneficiaries, each of them must be qualified to receive at the time his right opens.

616 However, if one category or one degree of beneficiaries includes several persons, only one of them need have the required qualities to receive at the time the right of that category or that degree opens.

617 The beneficiary is entitled to the income or the capital of the trust, or to both, depending on the terms of the act constituting the trust.

618 As long as the trust lasts, the beneficiary has no real rights in the property of the trust.

He has only a personal right to demand payment of the income or the capital.

619 The grantor may reserve for himself the power of determining each beneficiary's share.

He may also confer this power on the trustee, the beneficiary or a third party.

620 Acceptance by the beneficiary of a trust constituted by gift or by will is presumed.

Renunciation by the beneficiary has no effect unless it is express and in writing; it may be made at any time.

621 If the beneficiary renounces, or if his right lapses for any other reason, the following rules apply:

1. the right of the beneficiary of the income who is alone in his degree passes to the beneficiary of the income in the second degree or, if there is none, to the beneficiaries of the capital, in proportion to their shares;

2. the right of one of the beneficiaries of the income passes to his cobeneficiaries of the income, in proportion to their shares;

3. the right of one of the beneficiaries of the capital passes to his cobeneficiaries, in proportion to their shares.

622 Lapse of the right of the sole beneficiary of the capital, by renunciation or for any other reason, terminates the trust, and its property returns to the grantor or his successors.

This also applies when no beneficiary of the capital has been named.

CHAPTER IV

ADMINISTRATION OF TRUSTS

623 The trustee must act in every respect in accordance with the act constituting the trust.

624 The trustee has the rights and powers of a person entrusted with full administration of the property of others, and is subject to the same obligations.

625 The beneficiary is solidarily liable with the trustee if he takes part in any act whose effect is to defraud a creditor of the grantor or of the trust.

626 The grantor or the beneficiary, without prejudice to his recourse in damages and notwithstanding any stipulation to the contrary, may sue the trustee to:

1. compel him to execute his obligations or to perform any act which is necessary in the interests of the trust;

2. restrain him from any action harmful to the trust;

3. have him removed under Article 582.

627 The court, on motion by the beneficiary, may authorize the beneficiary to take legal action in the name of the trustee when, without sufficient reason, the latter refuses or fails to do so or is unable to act for any other reason.

The court may then give any directive which it deems appropriate.

628 The beneficiary may impugn any acts performed by the trustee in fraud of the rights of the trust or of any of its beneficiaries.

629 A trust for a purpose of public or private interest, except that contemplated in Article 607, is subject to the supervision of the Public Curator.

The Public Curator, in particular, may inspect the files of the trust, make an investigation and require the trustee to submit any account or report, and avail himself of Article 626.

630 When a trust expires, the trustee must transfer its property to those entitled to it.

631 The provisions of the Title on *Administration of the Property of Others* apply to trusts, when they are compatible with this Title.

CHAPTER V

DURATION OF TRUSTS

632 A trust constituted by gift or by will for the benefit of several persons successively may not include more than two degrees of income beneficiaries besides the beneficiary of the capital.

The degrees are calculated according to the rules governing substitution.

633 Moreover, the right of the first degree beneficiary must open not later than ninety-nine years after the trust is established, on pain of the trust lapsing.

The last degree beneficiary's quality to receive is assessed not later than upon the expiry of ninety-nine years after the trust is established.

If the right of the last degree beneficiary does not open before the expiry of ninety-nine years following establishment of the trust, those beneficiaries who have the required quality at the time mentioned in the preceding paragraph may receive alone, without regard to the provisions of Article 616.

634 A trust established for the fulfilment of a purpose of public or private interest may be perpetual.

635 The property of a trust constituted for the fulfilment of a purpose of public or private interest returns to the grantor or to his successors upon the expiry of the stipulated term, upon fulfilment of the intended purpose, upon impossibility of performance or termination of the trust for any other reason.

636 The court may, on motion, terminate a trust or amend its provisions.

Notice of the motion must be served upon the trustees.

The court designates the beneficiaries and the other persons on whom the motion must be served.

637 The court rules on this motion in the manner it deems appropriate in the circumstances, taking account of the interest of the beneficiaries.

To this end, it may render any order considered necessary.

638 The rules in Articles 621 and 622 apply as far as possible to any trust which is terminated by an order of the court.

BOOK FIVE

OBLIGATIONS

Introductory provisions

1 The object of an obligation is a prestation, which consists in doing or not doing something.

2 A prestation must be possible and lawful.

It must be determined or determinable.

TITLE ONE

SOURCES OF OBLIGATIONS

3 Obligations arise from a contract or from the law.

Obligations arise from unilateral juridical acts in certain cases provided for by law.

CHAPTER I

OBLIGATIONS ARISING FROM CONTRACTS AND FROM UNILATERAL JURIDICAL ACTS

General provisions

4 A contract is a meeting of minds intended to produce juridical effects.

5 A unilateral juridical act is a manifestation of will intended to produce juridical effects.

6 All contracts are governed by this Book, subject to express provision of law.

7 The rules governing contracts apply to unilateral juridical acts unless the contrary results from the nature of these acts or from the law.

8 Contracting parties regulate their juridical relationships as they see fit.

Nevertheless, they may not derogate either together or individually from any imperative provisions of law, nor from public order and good morals.

However, no party who pursues an illicit or immoral purpose without the knowledge of his cocontractor may set up the nullity resulting from that purpose against the cocontractor.

Section I

Formation of contracts

General provision

9 The formation of a contract requires a meeting of minds, parties capable of contracting, an object, and a particular form when required for that purpose.

§ - 1 Capacity to contract

10 The rules relating to the capacity to contract are laid down mainly in the Book on Persons.

§ - 2 Meeting of minds

I - Offer and acceptance

11 A manifestation of will may be express or tacit.

12 An offer to contract must comprise the essential elements of the proposed contract.

13 An offer may be made to a specified person or to an unspecified person.

14 An offer may be exclusive or non-exclusive.

An offer made to a specified person is not presumed exclusive.

15 An offer of things determined only as to kind binds the offerer to the extent that those things are available, or to the quantity he specifies.

16 An offer without a term may be revoked at any time before the acceptance is received.

An offer with a term may not be revoked before the expiry of the term.

If the person to whom an offer is made receives the revocation before the offer, the offer has no effect, even if accompanied by a term.

17 An offer without a term lapses on the expiry of a reasonable period.

An offer with a term lapses if the acceptance is not received within the term.

18 An offer which has not been accepted lapses when the person who makes it, or the person to whom it is made, dies or is placed under tutorship or under curatorship.

This provision does not apply to an offer stipulated as an accessory to a contract.

19 A contract is formed where and when acceptance is received by the offerer.

20 Silence does not imply acceptance, except in special circumstances, particularly usage or prior business relations.

21 The offer of a reward to any person who does something

is deemed accepted and binding on the offerer when the person does that thing, even if he is unaware of the offer.

22 Late acceptance or acceptance which does not comply with the offer does not constitute acceptance.

It constitutes a new offer.

23 When the person to whom an offer is made rejects it, the offerer is released in respect of that person.

24 A contract made with a person in bad faith in violation of an exclusive offer may not be set up against the beneficiary of the offer, subject to express provision of law.

This provision also applies to preference pacts, also called promises of first option.

25 An external clause referred to in a contract binds the parties.

However, if such a clause is not commonly used, it has no effect unless the party invoking it proves that the other party was aware of it when the contract was formed. This provision is imperative.

26 Parties may bind themselves by contract immediately, while withholding their agreement on certain points.

If there is no subsequent agreement on the reserved points, the court settles them, taking account of the nature of the matter and of usage.

II - Qualities of consent

27 Consent must be free and enlightened.

28 Consent is not valid if given by a person who is incapable of discernment when he gives it.

29 Consent may be vitiated by error, fear or lesion.

30 Error, even when inexcusable, vitiates consent if it bears on the nature of the contract, the identity of the thing, or any principal consideration of the contract.

31 An error induced by the fraud of one contracting party vitiates consent whenever, but for that error, the other party would not have contracted, or would have contracted on different conditions.

Fraud committed by a third party is deemed committed by a contracting party if he was or should have been aware of it.

32 Fraud may result from silence or from concealment.

33 Fear of serious harm vitiates consent when it is induced by violence on the part of the cocontracting party.

It also vitiates consent when violence is exercised by a third party for the purpose of prevailing upon the victim to contract.

34 In assessing fear, the court takes into consideration the circumstances and condition of the persons.

35 Fear produced by an abusive threat or exercise of any right or power vitiates consent.

36 Apprehended harm may relate to a contracting party or to a third party.

37 Lesion vitiates consent when it results from the exploitation of one of the parties by the other, and brings about a serious disproportion between the prestations of the contract.

Serious disproportion creates a presumption of exploitation.

38 A victim of a defect of consent may apply for the nullity of the contract or, if the circumstances so warrant, the reduction of his obligations.

Where the defect of consent is imputable to the other contracting party, the victim may also sue in damages or join both recourses.

39 A person whose inexcusable error entails nullity of the contract or reduction of his obligations may be liable in damages.

40 In the event of lesion, the court may also maintain any contract the nullity of which is demanded, provided the defendant offers a reduction of his claim or an equitable monetary supplement.

§ - 3 **Object of the contract**

41 The object of a contract is the creation, modification, transfer or extinction of obligations or of real rights.

§ - 4 **Form of the contract**

42 As a general rule, a contract need not be prepared in any specific form.

43 If a special form prescribed by law is not used, the contract will not be null, saving express provision.

44 A form prescribed on pain of nullity of a contract must be followed whenever the contract is modified.

45 A promise to enter into a contract is not subject to the form prescribed for the contract.

46 Parties may establish their contract in a form not required by law for its validity.

In this case, the form is not presumed required on pain of nullity.

Section II

Nullity of contracts

General provisions

47 Any contract which does not comply with the conditions necessary for its formation is null.

48 Nullity is absolute when it is the sanction of a rule of public interest.

The court must pronounce this nullity, even *proprio motu.*

Any interested person may invoke it.

A contract which is absolutely null may not be confirmed.

49 Nullity is relative when it is the sanction of a rule declared in the private interest, particularly if consent is not free or enlightened or if it is given by a person incapable of discernment.

The court may not pronounce this nullity *proprio motu.*

Only the person in whose favour it has been established may invoke it.

The person in whose favour it has been established may also confirm the contract.

§ - 1 Effects of nullity

50 A contract which is null is deemed never to have existed.

The parties are restored to the situation in which they were when the contract was made, subject to express provision of law.

51 Nullity of one clause does not entail nullity of the contract, unless it follows from the nature of that clause or from the intention of the parties that the contract would not have been made without the clause.

52 Restoration to the original position is made in kind.

However, if this is impossible or cannot be done without serious inconvenience, restoration is made by equivalence.

Equivalence is assessed at the time of the restitution.

53 A person who applies for nullity of a contract must offer to return to the other party whatever he has received from that party.

The offer may be made any time before judgment.

54 Protected persons must make restitution to the extent that they have benefited from the prestation received.

The person who demands restitution must prove that they so benefited.

However, they must make full restitution when they have made restitution in kind impossible by fraud on their part.

55 When the object of the contract or the objective pursued by the parties is unlawful, the court, in exceptional circumstances, may refuse restitution which would have the effect of according the plaintiff undue advantage.

56 An acquirer in good faith whose title is null is entitled to

the fruits of the thing until the day when proceedings in nullity are instituted.

57 An acquirer whose title is null assumes the risks of loss and deterioration of the thing until the day when proceedings in nullity are instituted.

58 The nullity of a contract may be invoked against third parties, subject to express provision of law.

§ - 2 **Confirmation**

59 Confirmation results from express or tacit intent to renounce invocation of nullity.

Intent to confirm must be certain and obvious.

60 The effects of confirmation are retroactive to the day the contract was made.

61 When several contracting parties can invoke nullity of a contract, confirmation by one of them does not prevent the others from invoking nullity.

Section III

Interpretation of contracts

62 When the common intent of the parties is clearly apparent in a contract, it cannot be set aside by interpretation.

When this intent is doubtful, it is determined by interpretation rather than by the literal meaning of the words.

63 The nature of the contract, usage and the behaviour of the parties are taken into account in the interpretation of a contract.

64 A clause is interpreted in the sense which gives it effect, rather than in that which gives it no effect.

65 The clauses of a contract interpret each other, and the meaning of each is derived from the entire contract.

66 A clause intended to avoid doubt as to the application of the contract to a particular case does not restrict the scope of the contract otherwise expressed in general terms.

67 Even if drafted in very general terms, the clauses of a contract cover only what the parties have agreed upon.

68 A contract is interpreted in favour of the party who assumed the obligation.

69 Nevertheless, a clause drawn up by or for one party must be interpreted in favour of the person obliged to adhere to it.

This provision is imperative.

Section IV

The effect of contracts between parties and in relation to third parties

General provisions

70 A contract legally formed has the effect of law on those who have entered into it, subject to express provision of law.

71 A contract extends not only to what is expressed in it, but also to everything that results from its nature, usage, equity and the law.

72 A contract creates rights and obligations only with respect to the contracting parties, save where otherwise provided by law.

73 Rights and obligations resulting from a contract pass to the universal successors and successors by universal title of the contracting parties, but not to their successors by particular title, unless the law, the will of the parties or the nature of the contract provides otherwise.

74 A contract may not be resolved, resiliated or modified except by agreement of the parties or for reasons recognized by law.

75 If unforeseeable circumstances render execution of the contract more onerous, the debtor is not freed from his obligation.

In exceptional circumstances, and notwithstanding any agreement to the contrary, the court may resolve, resiliate or revise a contract the execution of which would entail excessive damage to one of the parties as a result of unforeseeable circumstances not imputable to him.

76 An abusive clause in a contract may be annulled or reduced.

§ - 1 **Transfer of ownership**

77 Transfer of ownership by contract is governed by the chapters on *Sale* and *Gifts*.

§ - 2 **Fruits and risks attached to things**

78 Attribution of fruits and of risks attached to things is governed mainly by the Book on *Property*.

§ - 3 **Simulation**

79 Simulation is lawful if the parties do not seek to evade the requirements of the law, public order or good morals.

80 Between the parties, the real act prevails over the apparent one.

81 A third party in good faith may avail himself of either the apparent or the real act, according to his interest.

82 When conflicts of interest arise between third parties in good faith, preference is given to the one who avails himself of the apparent act.

§ - 4 **Third party obligation**

83 A person may, in his own name, promise that a third party will bind himself towards the cocontracting party.

84 The promisor is liable in damages towards the cocontracting party if the third party does not bind himself.

§ - 5 **Stipulation in favour of another**

85 A person may stipulate by contract for the benefit of another.

86 The stipulation gives rise to a direct right against the promisor in favour of the third party beneficiary.

87 The third party beneficiary must exist at the time of the stipulation, subject to express provision of law.

88 A stipulation may be revoked as long as the third party beneficiary has not advised the stipulator or the promisor of his will to accept.

89 The stipulator alone may revoke a stipulation.

However, he may not revoke a stipulation to the detriment of the promisor who justifies his interest in maintaining the stipulation.

90 The stipulator's right of revocation may not be exercised by his heirs or creditors.

Revocation or lapse of the stipulation benefits the stipulator.

This article applies unless the law, the will of the parties or the nature of the contract provides otherwise.

91 Revocation by the stipulator takes effect as soon as it is made known to the promisor.

Revocation made by will, however, takes effect of right at the time of death.

92 A third party beneficiary and his successors may validly accept the stipulation, even after the stipulator or the promisor has died, unless the law, the will of the parties or the nature of the contract provides otherwise.

93 A promisor may set up against a third party beneficiary the exceptions which he could have set up against the stipulator, provided he was unaware that these exceptions existed when the stipulation was made.

CHAPTER II

OBLIGATIONS ARISING FROM THE LAW

Section I

Obligations arising from behaviour towards others

94 Every person capable of discernment must behave towards others with the prudence and diligence of a reasonable person.

95 A person incapable of discernment who causes damage

to another may be required to make reparation according to the circumstances.

In particular, consideration is given to the fact that the victim cannot obtain damages from the person responsible for the supervision of the author of the damage.

96 No person may cause to another damage which exceeds the normal inconveniences resulting from proximity.

97 Parents are bound to ensure with prudence and diligence the education and supervision of their minor children.

They are responsible for the damage caused by a minor child, unless they prove that they have committed no fault.

98 The same applies to persons entrusted with the education or supervision of a minor or of a person incapable of discernment.

However, a person who performs these duties gratuitously is not subject to the presumption of fault.

99 An employer is responsible for the damage for which his employees are responsible in the performance of their duties.

100 A person who has the custody of a thing is responsible for the damage resulting from an autonomous act of the thing, unless he proves a fortuitous event.

101 An owner of a building is responsible for the damage caused by the ruin of the building, unless he proves that the ruin did not result from a defect in the construction or from lack of maintenance.

The preceding paragraph applies even if, when the damage is caused, the title is null or can be resolved.

102 A manufacturer of all or part of a moveable thing, and

any other person who distributes that thing under his name or as his own, is responsible for the damage caused by a defect in the design, manufacture, preservation or presentation of the thing, unless the defect was apparent.

The same applies when the user is given no indication necessary to his protection concerning risks and dangers that he could not himself detect.

103 A victim who wishes to avail himself of the recourses to which he is entitled under the preceding article must so notify his debtor in writing within ninety days of the act which caused the damage.

If the victim gives a reasonable excuse for his delay, a notice given after this period remains valid and the recourse remains admissible.

Section II

Management of the affairs of another

104 There is management of the affairs of another when a person knowingly undertakes to manage the affairs of another, unbeknown to that other person.

105 The manager must continue his management until he can withdraw without risk of loss, or until his principal is in a position to assume it.

The heirs of a manager who are aware of his management and are able to act are bound only to do what is immediately necessary to avoid loss.

106 Death of the principal does not exempt the manager from continuing his management.

107 In carrying out his management, a manager is subject to the obligations of an administrator of the property of another

entrusted with simple administration, to the extent to which they are not incompatible with those of this section.

108 If this obligation is not executed, however, the court may reduce the amount of damages, with due regard for the circumstances.

109 A manager who acts on behalf of his principal is personally liable towards third parties with whom he contracts, to the extent that his principal is not liable as regards those parties.

110 If the management was required in the interest of the principal, and even if the desired result has not been attained, the principal must:

1. reimburse the manager for all useful or necessary expenses;
2. assume all useful or necessary obligations contracted on his behalf by the manager;
3. indemnify the manager for the damage which resulted from his management and was not caused by his fault.

111 When the management was not required in the interest of the principal, he is bound by the same obligations but only to the extent to which he has benefited.

112 Expenses are assessed as to their necessity or usefulness at the time they were incurred.

113 Obligations contracted by the manager in his own name do not bind the principal towards third parties.

114 A manager may retain any moveable thing which he possesses by reason of his management, until he is reimbursed what is due him.

115 A manager who has made additions or improvements for which he is not entitled to reimbursement may remove

them at his own expense, or his principal may compel him to do so, provided the manager restores everything to its original condition.

The principal, however, retains the right to keep the additions or improvements, provided he pays their cost or their current value.

Section III

Recovery of things not due

116 Anything paid in error may be recovered.

117 Restitution is made in kind.

However, if this is impossible or cannot conveniently be done in this way, restitution is made by equivalence.

Equivalence is assessed at the time of the restitution.

118 The right to restitution ceases, nevertheless, when the creditor in good faith has destroyed his title, allowed it to be prescribed, or deprived himself of security following the payment, saving recourse of the person who paid against the real debtor.

119 A person who, in good faith, has unduly received a certain and determinate thing does not assume the risk of loss, even if the loss is the result of his own act.

He must, however, transfer to the owner his right to an indemnity for the loss of the thing, including that owed by an insurer or the indemnity if he has already received it.

120 If he is in bad faith, he bears the loss, even that resulting from a fortuitous event.

121 A person who alienates a thing he has received in error must repay what he has obtained for it.

If he is in bad faith, he may be compelled to pay the value which the thing had at the time of the restitution.

122 A person who must make restitution owes the fruits, and particularly the interest, from the day he was first in bad faith.

123 A person who must make restitution, even if he was in bad faith, is entitled to reimbursement for necessary expenses incurred in preserving the thing, and for the cost of repairs done.

124 A person who must make restitution may remove, at his own expense, any improvements he has made, provided he restores the thing to its original condition.

If he was in good faith, he may be indemnified for all improvements he leaves, up to the appreciated value at the time of restitution.

125 A person who must make restitution may retain the thing until he is reimbursed for the expenses to which he is entitled.

126 Protected persons must make restitution according to the rules set down in Article 54.

Section IV

Unjustified enrichment

127 A person who unjustifiably enriches himself at the expense of another must to the extent of his enrichment indemnify the other for his empoverishment.

128 An indemnity is due only if the enrichment subsists on

the day of the demand, saving bad faith on the part of the person who is enriched.

129 If the person who is enriched disposes of his enrichment gratuitously, with no intention of defrauding the person who is empoverished, the action is taken by the empoverished person against the third party beneficiary.

130 No person may avail himself of this section unless no other legal means exist against the person who is enriched.

TITLE TWO

MODALITIES OF OBLIGATIONS

CHAPTER I

OBLIGATIONS WITH A TERM

131 An obligation with a term is one whose exigibility depends on a future and certain event.

132 When exigibility depends on the expiry of a period of time and no date is fixed, the first day of that period is not counted, but the day of its expiry is counted.

133 If the event which the parties have held to be certain does not occur, the debt is exigible on the day when the event normally should have occurred.

134 A term is presumed to have been stipulated in favour of the debtor, unless it results from the law, the agreement or the circumstances that it was stipulated in favour of the creditor or of both parties.

135 The party in whose favour a term is stipulated may renounce it.

136 If one party is allowed to determine when the term expires, the other party may apply by motion to the court to have the date of expiry fixed, with due regard for the circumstances.

137 Anything due with a term may not be required before the term expires.

138 Anything paid in advance, voluntarily and without error or fraud, may not be recovered.

139 Before the term expires, the creditor may take all useful measures to ensure preservation of his rights.

140 A debtor who becomes insolvent or is declared bankrupt forfeits of right the benefit of the term.

141 A debtor who does not furnish the security promised, or who reduces the security granted to the creditor, does not lose the benefit of the term until thirty days have expired after the debtor receives a written notice to this effect.

The debtor, however, may remedy the defect within the prescribed period, and thus prevent forfeiture of the term.

142 Any stipulation of forfeiture of the term is subject to the preceding article.

This provision is imperative.

143 Forfeiture of the term incurred by one of the codebtors, even a solidary one, cannot be set up against the other debtors.

CHAPTER II

CONDITIONAL OBLIGATIONS

144 A conditional obligation is one whose existence or extinction depends on a future and uncertain event.

145 The condition upon which an obligation depends must be possible and lawful.

146 An obligation which depends on an impossible or unlawful condition is null or may be reduced, as the case may be.

147 An obligation whose existence depends on a purely potestative condition on the part of the debtor is null.

148 If no term is set for the fulfilment of a condition, the condition may be fulfilled at any time; the condition lapses when it becomes certain that it will not be fulfilled.

149 When an obligation is contracted on the condition that a certain event will not occur within a fixed period of time, the condition is fulfilled once the period has expired and the event has not occurred.

When it becomes certain that the event will not occur, the condition is fulfilled whether a period has been fixed or not.

150 A conditional obligation becomes pure and simple when the debtor bound under the condition prevents its fulfilment.

151 Before the condition is fulfilled, the creditor may take all useful measures to ensure preservation of his rights.

152 A conditional right may be transferred and transmitted.

153 The debtor must execute his obligation once the suspensive condition has been fulfilled.

The obligation is extinguished of right once the resolutive condition has been fulfilled.

154 A condition, once fulfilled, has retroactive effect, between the parties and with respect to third parties, to the day when the contract was made, subject to express provision of law.

155 An acquirer under a resolutive condition is entitled to the fruits, and assumes the risks of loss and deterioration of the thing until the condition is fulfilled.

The same applies to a person who alienates under a suspensive condition.

CHAPTER III

SOLIDARY OBLIGATIONS

Section I

Solidarity among debtors

156 An obligation is solidary between the debtors when they are obliged towards the creditor to the same thing in such a way that each of them may separately be compelled to execute the whole obligation.

157 An obligation is solidary even when the debtors have bound themselves differently or successively to the execution of the prestation.

158 The debtors under the same obligation are presumed solidary.

159 However, when several persons bind themselves in the same contract to pay a sum of money, they are not presumed solidary.

160 An obligation to repair damages caused by inexecution of a solidary obligation is solidary, even if the inexecution is imputable to only one of the debtors.

161 Payment of an obligation by one of the solidary debtors releases the others towards the creditor.

162 A creditor under a solidary obligation may require full payment of the obligation from the debtor of his choice, who may not plead the benefit of division.

163 Proceedings instituted against one of the solidary debtors do not deprive the creditor of his recourse against the others.

164 A debtor who is sued may plead only those exceptions which are personal to himself and those which are common to all solidary debtors.

165 When, through the act of the creditor, one of the solidary debtors is deprived of a security or of a right which he could have set up by subrogation, he is discharged up to the amount of that security or right.

166 A debtor who is sued may call the other solidary debtors in warranty.

167 A creditor who renounces solidarity with regard to one of the codebtors retains his solidary recourse against the others for the entire debt.

168 If a creditor receives separately the share of one of the solidary debtors, and specifies in the discharge that it applies to that share, the creditor renounces solidarity with regard to that debtor, but retains it with regard to the others.

169 A creditor who sues a solidary codebtor for his share loses his solidary recourse against that codebtor if he agrees to the demand or is condemned by judgment.

170 If a creditor receives separately the share of one of the codebtors in the arrears or interest of the debt, and specifies in the discharge that it applies to his share, the creditor loses his solidary recourse against that debtor for the arrears or interest accrued.

171 The obligation is divided of right among the heirs of the solidary debtor.

172 A solidary debtor who has executed his obligation may only recover from his codebtors their respective shares, even if he is subrogated in the rights of the creditor.

173 Each of the solidary debtors must contribute in proportion to his interest in the debt or, with respect to damages, according to his share of the responsibility.

Where it is impossible to establish the share of each debtor, the contribution is made in equal shares.

174 If a solidary obligation has been contracted in the exclusive interest of one of the debtors, he is responsible for the entire debt as regards the other codebtors.

The same applies if a solidary obligation to pay damages results from the responsibility of only one of the codebtors.

175 A solidary debtor sued for reimbursement by the debtor who has executed the obligation may raise any common exceptions not set up by that debtor against the creditor.

176 The loss occasioned by the insolvency of one of the solidary debtors is divided equally among all the other codebtors, unless they have unequal interests in the debt.

However, the creditor who has renounced solidarity with regard to one of the codebtors bears that codebtor's contributory share.

Section II

Solidarity among creditors

177 Solidarity among creditors exists only if express provision is made for it.

178 Each of the solidary creditors may require of the debtor full payment of the debt.

179 Payment made to one of the solidary creditors discharges the debtor with regard to all of them.

180 The debtor may pay any of the solidary creditors as long as he has not been sued by one of them.

181 An obligation is divided of right among the heirs of the solidary creditor.

CHAPTER IV

DIVISIBLE OBLIGATIONS AND INDIVISIBLE OBLIGATIONS

182 An obligation is divisible unless its object cannot be divided.

However, a stipulation may be made to the effect that an obligation is indivisible.

183 An indivisible obligation is not divided among the heirs of the debtor or among those of the creditor.

184 An indivisible obligation is otherwise subject to the rules governing solidarity.

CHAPTER V

ALTERNATIVE OBLIGATIONS

185 An alternative obligation is one which has as its object several prestations, of which only one must be executed.

186 No debtor may execute or be compelled to execute part of one prestation and part of another.

187 The option belongs to the debtor unless the contrary results from the nature of the contract or the intention of the parties.

188 When the option belongs to the creditor and he has

failed to exercise it after he has been put in default, the debtor may release himself by executing one of the prestations.

189 If execution of one of the prestations is impossible or unlawful, the debtor must execute the remaining one.

190 If the party who had no option renders the execution of one of the prestations impossible through his fault, he may be liable in damages.

CHAPTER VI

FACULTATIVE OBLIGATIONS

191 A facultative obligation is one whose object is a prestation from which a debtor may nevertheless release himself by executing another prestation.

192 A debtor is released if, through no fault of his, it becomes impossible to execute the prestation which is the object of the obligation.

TITLE THREE

PROTECTION OF THE RIGHTS OF CREDITORS

General provisions

193 The property of a debtor, moveable and immoveable, present and future, constitutes the common pledge of his creditors, unless it has been specially declared exempt from seizure.

194 A creditor may take all useful measures to ensure preservation of his rights.

CHAPTER I

INDIRECT ACTION

195 A creditor may exercise the rights and actions of his debtor, except those which are exclusively attached to the person, when to his prejudice the debtor refuses or neglects to exercise them.

196 The debt need not be liquid, exigible or certain, provided it is not futile.

CHAPTER II

PAULIAN ACTION

197 A creditor who suffers serious damage through an act by which his debtor renders himself or attempts to render himself insolvent, or by which, being insolvent, he grants preference to an existing creditor may have it declared that the act not be invoked against him.

198 No onerous contract or payment gives rise to this

recourse, unless the cocontractor or the creditor who received payment was aware that the debtor was insolvent.

199 A gratuitous contract, or a payment under such a contract, gives rise to that recourse even if the cocontractor or the creditor who received payment was not aware that the debtor was insolvent.

200 The same applies to an undertaking to execute a natural obligation or to its execution which, in both cases, constitute with regard to the creditors an act by gratuitous title.

201 The debt must exist prior to the act impugned, except when the purpose of the act was to defraud a subsequent creditor.

202 The debt need not be liquid, exigible or certain, provided it is not futile.

203 On pain of forfeiture, the recourse must be exercised within one year after the day when the creditor becomes aware of the prejudice resulting from the act impugned.

However, when the recourse is instituted by a trustee in bankruptcy, on behalf of all the creditors, the period of time begins to run on the day when the trustee is appointed.

204 When the plaintiff exercises his recourse, the other creditors may avail themselves of any appropriate procedure to assert their rights.

TITLE FOUR

VOLUNTARY EXECUTION OF OBLIGATIONS

CHAPTER I

PAYMENT IN GENERAL

205 Payment is the voluntary execution of an obligation.

206 Payment of a natural obligation may not be recovered.

207 An undertaking to execute a natural obligation constitutes a civil obligation.

208 Payment is invalid unless made by a person who has a legal right in the thing paid which entitles him to give it in payment.

Nevertheless, no payment of any sum of money or of any consumable thing may be recovered against a creditor who has consumed the thing in good faith, even when the payment is made by a person who was not the owner.

209 A creditor may not be compelled to receive a thing other than that owed him, even if the thing offered is of greater value.

210 If the thing is determined as to kind only, the debtor need not give a thing of the best quality, nor may he offer a thing of the worst quality.

The thing must be of marketable quality.

211 A creditor may not be compelled to accept partial payment of a debt.

212 Payment must be made to the creditor or to his authorized representative.

Payment made to a person not authorized to receive it for the creditor is valid if the creditor ratifies it; if he does not ratify it, the payment is only valid insofar as the creditor has benefited from it.

213 Payment made to a protected person is valid only to the extent that the person has benefited from it.

The debtor bears the burden of proving that the protected person benefited from it.

214 Payment made in good faith to the ostensible creditor is valid, even though it is subsequently established that he is not the rightful creditor.

215 Payment made by a debtor despite a seizure is invalid with regard to the seizing creditor who may, according to his rights, compel the debtor to pay a second time, in which case, the debtor has a recourse against the creditor so paid.

216 A person compelled to pay may do so under protest so as to avoid prejudice, and may declare that he does not owe the debt.

He has a right to recovery, unless he owed the debt so paid.

217 The creditor must receive payment, even if it is offered by a third party, unless the debt was constituted in consideration of the debtor personally.

218 Payment of a certain and determinate thing is made at the place where the thing was when the obligation was contracted.

All other debts are paid at the domicile of the debtor.

219 The debtor is responsible for the costs incurred in making payment.

220 A debtor who pays his debt is entitled to a discharge and to the recovery of the negotiable instrument if there is one.

CHAPTER II

PAYMENT WITH SUBROGATION

221 A person who pays in the debtor's place may be subrogated in the rights of the creditor, particularly in the security which the creditor holds at the time of payment.

222 Conventional subrogation must be express and must be attested to in writing.

It is granted by the creditor or by the debtor.

223 Subrogation granted by the creditor must be made at the time he receives payment.

It takes effect without the consent of the debtor.

224 Subrogation may be granted by a debtor, only in favour of his lender.

The deed of loan must state that the loan is made to pay the debt, and the discharge must indicate that payment was made out of the loan.

This subrogation takes effect without the consent of the creditor.

225 Subrogation takes effect of right:

1. in favour of a creditor who pays another creditor whose claim has preference over his by reason of a real security;
2. in favour of an acquirer of property who pays a creditor whose claim is guaranteed by real security on the property;

3. in favour of a person who pays a debt for which he is bound with or for other persons and which he has an interest in paying;
4. in favour of a beneficiary heir who pays out of his own funds a debt owed by the succession;
5. in all other cases established by law.

226 Subrogation has effect against the principal debtor and against all persons who guarantee the debt.

227 A creditor who has been only partially paid may exercise his rights for the balance, in preference to the subrogate who has partially paid him.

CHAPTER III

DELEGATION OF PAYMENT

228 The appointment by a debtor of a person to pay in his stead constitutes delegation of payment, provided the delegate binds himself personally as regards the payment.

229 A creditor who accepts the delegation retains his rights against the debtor who delegates, except in cases of novation.

230 Delegation of payment is otherwise subject to the rules governing stipulations in favour of another.

CHAPTER IV

TENDER AND DEPOSIT

231 Tender is the presentation to the creditor, as payment, of a thing due when and where that thing is payable.

It must also include a reasonable amount to cover

unliquidated expenses due by the debtor, saving the right to make up any deficiency in that sum.

232 A creditor is in default of right when he unlawfully refuses a valid tender or refuses to take action on the notice which replaces it under Articles 236 and 237.

233 A creditor is also in default of right when he clearly expresses his intention to refuse a tender.

The debtor is not then required to tender the thing to the creditor, nor to give him the notice which takes its place.

234 The creditor is also in default of right when, despite his diligence, the debtor cannot find him and is in a position to make the payment when and where it is due.

The burden of proof is upon the debtor.

235 A creditor who is in default bears the loss of the thing by fortuitous event.

236 If the thing due is payable at the debtor's domicile, residence or place of business, or at the place where the thing is, and the debtor notifies the creditor that he is ready to execute his obligation, the notice has the same effect as tender, provided the debtor proves he was in a position to make the payment when and where the thing due was payable.

237 When the debtor has reason to believe that the creditor will refuse payment of a thing which is difficult to transport, he may require the creditor to signify his will to receive it.

If the creditor fails to do so in due course, the debtor is not required to transport the thing, and his notice has the same effect as tender, provided the debtor proves that he would have been in a position to make the payment when and where the thing was payable.

238 A creditor in default is responsible for the expenses incurred in the storage or preservation of the thing.

The court, upon motion, may determine any appropriate measures, including sale of the thing and deposit of the price.

239 Tender of a cheque made to the order of the creditor and drawn at or certified by a bank or any other financial institution doing business in Québec is equivalent to tender in currency of the same amount.

240 When tender is attested to in a notarial instrument, the notary describes the thing tendered in his minute, and records the creditor's answer and, where there is refusal, the reasons given by the creditor.

241 Tender made during judicial proceedings is governed by the rules in the Code of Civil Procedure.

242 Tender subsequently accepted by the creditor or declared valid by the court is equivalent, where the debtor is concerned, to payment made on the day the tender is made, provided the debtor has always been willing to pay since that time.

243 Where a sum of money is due, payment is established on the day of deposit, and interest ceases to accrue on that day.

244 Deposit is the entrusting by the debtor to the Québec General Deposit Office of any money or securities which he owes.

During judicial proceedings, this is done at the office of the court.

245 Deposit of a sum of money may be made, in particular, when:

1. the creditor, for no lawful reason, refuses to accept it or is incapable of giving a discharge;
2. the debt is the object of a dispute involving several persons;
3. the debtor, with no negligence on his part, is not in a position to know with sufficient certainty to whom or where the debt is payable;
4. the debtor is unable to pay because the creditor cannot be found where the debt is payable.

246 The debtor may withdraw the amount deposited if, upon motion, he is authorized by the court to do so.

The withdrawal releases neither the codebtors nor the sureties.

247 The debtor may also withdraw the deposited amount with the consent of the creditor.

The withdrawal, however, may not prejudice the rights of third parties, nor prevent discharge of the codebtors or the sureties.

248 When a deposit is declared to be sufficient, the creditor is responsible for the expenses incurred in making it.

CHAPTER V

IMPUTATION OF PAYMENT

249 If a person owes several debts, he may indicate, at the time of payment, which debt he intends to discharge.

250 However, when the term operates in favour of the creditor, the debtor may not, without the consent of the creditor, impute payment to a debt not due.

251 No person who owes a debt bearing interest or produ-

onsent of the creditor, impute

payment which he makes to the capital in preference to the interest or arrears.

Payment made on the capital and interest which is not a full payment is imputed first upon the interest.

252 When a person who owes several debts has accepted a discharge whereby the creditor has imputed what he has received to one of those debts, the debtor may no longer require imputation to a different debt.

253 In the absence of imputation by the parties, payment is first imputed to whichever debt is due.

If several debts are due, payment is imputed to that which the debtor has the greatest interest in paying.

When the interest is equally divided, payment is imputed to the debt which became due first.

All things being equal, imputation is effected proportionally.

TITLE FIVE

INEXECUTION OF OBLIGATIONS

General provisions

254 If the debtor, through his fault, fails to execute his obligation, the creditor is entitled, under this title, to execution of the obligation in kind, to reduction of his correlative obligations, to resolution or resiliation of the contract, and to damages.

255 The exercise of a right conferred on the creditor in the event of inexecution does not entail renunciation of any other right.

The creditor, however, must discontinue his first application before exercising any other incompatible right.

256 If two persons are reciprocally debtors and creditors under correlative and exigible obligations, the debtor in good faith may refuse to execute his obligation to the extent that the creditor does not execute his own obligation or does not offer to execute it.

The debtor, however, may not raise an inexecution of minor importance as a pretext for refusing to execute his own obligation.

CHAPTER I

PUTTING IN DEFAULT

257 Despite any agreement to the contrary, a creditor who wishes to avail himself of the rights conferred on him in a case of inexecution must, unless exempted by law from so doing, put his debtor in default to execute his obligation within a fixed period of time.

The period must be reasonable taking into account the nature of the obligation and the circumstances.

258 If the period fixed is not reasonable, the debtor may validly execute his obligation within a reasonable period.

259 A period agreed on by the parties is presumed reasonable.

260 A debtor is put in default by the creditor's written or verbal extrajudicial demand.

261 A judicial demand made before the debtor has been put in default, when this is required, has the effect of putting the debtor in default.

However, if the debtor executes his obligation within a reasonable period, the costs of the demand are borne by the creditor.

262 A debtor is in default of right when:

1. he knew or should have known that his obligation could have been usefully executed only within a period of time which he has allowed to elapse;
2. an emergency or an urgent danger exists;
3. he has violated an obligation not to do;
4. he has made clear to the creditor his intention not to execute the obligation;
5. execution of the obligation has become impossible through his fault.

A statement or stipulation in the contract does not exempt the creditor from proving the above-mentioned circumstances.

263 A debtor may not be put in default until the obligation

becomes exigible, notwithstanding any agreement to the contrary.

However, a debtor is in default of right, even before the obligation becomes exigible, in the cases provided for in the fourth and fifth sub-paragraphs of the preceding article.

264 If one of the solidary debtors is put in default, this has no effect as regards the others.

265 If one of the solidary creditors puts the debtor in default or takes any conservatory measure, this has effect as regards the others.

266 The debtor is responsible for all moratory damages and for any fortuitous event from the time he is in default of right or when the period required in the putting in default expires.

CHAPTER II

EXECUTION IN KIND

267 A creditor, in cases which admit of it, may demand that his debtor execute the obligation in kind.

268 If the debtor fails to execute his obligation, the creditor may execute it, or have it executed, at the debtor's expense.

269 A creditor who wishes to avail himself of this right must so notify his debtor when putting him in default, unless the debtor is in default of right.

270 A creditor may be authorized to destroy or remove, at the debtor's expense, anything done in violation of his obligation.

271 If an obligation to pass a deed is not executed, the creditor is entitled to obtain a judgment replacing the deed.

CHAPTER III

REDUCTION OF OBLIGATIONS

272 If the debtor, through his fault, fails to execute his obligation, the creditor is entitled to a proportional reduction of his correlative obligation.

273 A creditor who wishes to avail himself of this right must so notify his debtor in the putting in default, unless the debtor is in default of right.

CHAPTER IV

RESOLUTION OF CONTRACT

274 If the debtor, through his fault, fails to execute his obligation, the creditor is entitled to resolution of the contract, subject to express provision of law.

275 A creditor is not entitled to resolution if the inexecution is of minor importance.

This provision is imperative.

276 A creditor who wishes to avail himself of resolution must so notify his debtor when putting him in default, unless the debtor is in default of right.

277 Resolution occurs, without judicial proceedings being required, if the debtor is in default of right.

The same applies when the debtor has not executed his obligation before the expiry of the period required in the putting in default.

278 A contract which is resolved is deemed never to have existed.

The parties are restored to the situation in which they were when the contract was made, subject to express provision of law.

A creditor who has availed himself of his right to resolution may retain what he has already received by paying the equivalent, if it is in his interest to do so.

279 Restoration to the original position is made in kind.

However, if this is impossible or cannot be done without serious inconvenience, restoration is made by equivalence.

Equivalence is assessed at the time of restitution.

280 The resolution of a contract may be set up against third parties, subject to express provision of law.

281 Every resolutory clause is governed by this chapter, notwithstanding any agreement to the contrary.

CHAPTER V

RESILIATION OF CONTRACT

282 If the debtor, through his fault, fails to execute his obligation, the creditor is entitled to resiliation of a successive contract in the course of execution.

283 A creditor is not entitled to resiliation if the inexecution is of minor importance.

This provision is imperative.

284 A creditor who wishes to avail himself of resiliation must so notify his debtor when putting him in default, except when the debtor is in default of right.

285 Resiliation occurs, without judicial proceedings being required, if the debtor is in default of right.

The same applies when the debtor has not executed his obligation before the expiry of the period required in the putting in default.

286 A contract which is resiliated ceases to exist, but only for the future.

287 Every clause relating to resiliation of a contract is subject to this chapter, notwithstanding any agreement to the contrary.

CHAPTER VI

DAMAGES

General provisions

288 If the debtor, through his fault, fails to execute his obligation, the creditor is entitled to damages, without prejudice to his other rights.

289 Damages are awarded to repair the damage sustained by the creditor.

290 However, in cases of intentional fault or gross fault, the court may also award punitive damages.

291 The obligation of a debtor to pay damages is not affected by payments made by a third party, whether as a gratuity or under a contract or the law.

292 A discharge or settlement by a victim of bodily injuries, and a statement obtained from the victim within thirty days of the act which caused the damage by the person who caused the injuries, by an insurer or by his representatives, may not be invoked against the victim.

Section I

Damage

§ - 1 Nature of damage

293 Material or moral damage is subject to reparation.

294 Damage generally includes the loss sustained by the creditor and the profit of which he is deprived.

§ - 2 Assessment of damage

I - Legal assessment

295 A creditor is entitled to reparation for the damage which results directly from inexecution of an obligation.

In contractual matters, the debtor is required to provide reparation only for normally foreseeable damage, saving intentional or gross fault on his part.

296 Within five years after the final judgment or the private arrangement, a creditor who has obtained damages for bodily injuries may apply for an indemnity supplement if his condition has subsequently worsened seriously.

297 Damages awarded to a creditor for the inexecution of an obligation bear interest at the legal rate, as of the institution of the action.

However, in cases of physical injury, the court may order that the interest on the damages will accrue as from the date of the act which caused the injury.

The court may add an indemnity to the amount so awarded, computed by applying to this amount, from these dates, a percentage equal to the excess of the interest rate fixed

under Section 28 of the *Revenue Department Act*, over the legal interest rate.

298 Damages which result from the inexecution of an obligation to pay a sum of money consist of interest at the rate agreed upon or, in the absence of agreement, of interest at the legal rate.

A creditor is entitled to those damages from the time the debtor is put in default, without being required to prove damage.

A creditor, however, may stipulate that he will be entitled to additional damages provided he justifies them, but this stipulation is not required in the event of inexecution of a legal obligation.

299 Interest accrued on capital bears interest:

1. when provision is made for this in an agreement or by law;

2. when new interest is specially demanded in a suit.

II - Conventional assessment

I. Clauses and notices excluding or limiting responsibility

300 No person may exclude or limit his responsibility when it results from intentional or gross fault.

301 No person may exclude or limit his responsibility for injury to the person, subject to express provision of law.

302 A notice or sign stipulating exclusion or limitation of responsibility has effect only if it is proven that the party against whom the notice or sign is invoked was aware of its existence when the contract was formed.

303 No person may use a notice or sign to exclude or limit his responsibility as regards third parties.

However, the notice or sign may constitute warning of a danger.

2. Penal clauses

304 A penal clause is one by which a debtor agrees to suffer a penalty if he does not execute his obligation.

305 The penalty is due without the creditor being bound to prove the damage that the inexecution has caused him.

306 A penal clause is subject to Article 76.

307 A creditor may demand execution of the obligation rather than payment of the stipulated penalty.

He may not demand both together, unless the penalty has been stipulated solely for being late in the execution of the obligation.

308 A stipulated penalty may be reduced to the extent to which the creditor has benefited from partial execution of the obligation.

309 A creditor may not avail himself of a penal clause before the debtor is in default to execute his obligation.

310 A clause by which a debtor undertakes to defray the collection fees should he fail to pay his debt when it is due is without effect.

Section II

Apportionment of responsibility

311 When several persons have caused the damage, responsibility is apportioned among them in proportion to the seriousness of their respective faults.

312 A debtor is not responsible for any increased damage if the creditor could have avoided it by reasonable means.

313 When several persons have committed separate faults any one of which could have caused the damage, and it is impossible to determine which fault actually caused it, all are solidarily responsible.

TITLE SIX

EXTINCTION OF OBLIGATIONS

CHAPTER I

COMPENSATION

314 When two persons are reciprocally indebted to one another, both debts are extinguished by compensation up to the amount of the lesser debt.

315 Compensation operates of right when two equally liquid and exigible debts exist and the object of each of them is a sum of money or a certain quantity of fungible goods of the same kind.

316 A party may apply for judicial liquidation of a debt under the Code of Civil Procedure in order to set up compensation.

317 Compensation occurs even if the debts are not payable at the same place, provided allowance is made for remittance expenses.

318 A period of grace granted by the court or by law for payment of a debt does not prevent compensation.

319 There is no compensation when:

1. an application is made for restitution of a thing of which the owner has been unjustly deprived;
2. an application is made for restitution of a thing deposited;
3. a debt results from an act performed with intention to harm;
4. a debt is exempt from seizure.

320 When several debts subject to compensation are owed by one person, the compensation is governed by the rules on imputation of payment.

321 A solidary debtor may not set up compensation for what the creditor owes his codebtor, except as regards the codebtor's share in the solidary debt.

322 A debtor may not set up against a solidary creditor compensation for what a cocreditor owes him, except as regards the cocreditor's share in the solidary debt.

323 A surety may set up compensation for what the creditor owes the principal debtor.

324 A principal debtor may not set up compensation for what the creditor owes the surety.

325 A debtor who accepts a transfer which the creditor makes to a third party may not set up against the transferee the compensation he could have set up against the transferor before the acceptance.

A transfer not accepted by the debtor, but served upon him, prevents compensation only as regards debts due by the transferor subsequent to the service.

326 Compensation may not prejudice the acquired rights of third parties.

327 Renunciation of compensation may not prejudice the acquired rights of third parties.

328 A debtor who could have set up compensation and has nevertheless paid the debt he owed may not subsequently avail himself, to the prejudice of third parties, of any security attached to his debt, unless he was unaware of the existence of the debt at the time of payment.

CHAPTER II

NOVATION

329 There is novation when:

1. a debtor assumes towards his creditor a new debt replacing the first debt which is extinguished;

2. a new debtor replaces the former debtor who is discharged by the creditor; novation then takes place without the consent of the former debtor;

3. a new creditor replaces the former creditor with regard to whom the debtor is discharged.

330 Novation is not presumed.

There must be an obvious intention to effect it.

331 Novation extinguishes the former obligation and its accessories, and substitutes a new obligation for it.

However, it may be agreed that the real security will be retained and attached to the new debt, provided the owner of the property affected consents to it.

332 Novation taking place between a creditor and one of his solidary debtors releases the other codebtors in respect of the creditor.

However, when the creditor has insisted on accession of the codebtors to novation, the former debt subsists if the codebtors refuse.

333 Novation which has been agreed to by one of the solidary creditors may not be set up against his cocreditors, except as regards the share of the creditor in the solidary debt.

CHAPTER III

CONFUSION

334 When the qualities of creditor and of debtor are combined in the same person, confusion arises which extinguishes the obligation.

335 Confusion which arises when the qualities of creditor and of debtor are combined in the same person benefits the sureties.

336 Confusion which arises when the qualities of surety and of creditor, or of surety and of principal debtor, are combined does not extinguish the principal obligation.

337 Confusion which arises when the qualities of creditor and of solidary debtor are combined does not extinguish the obligation, except to the extent of the codebtor's share.

338 Confusion which arises when the qualities of debtor and of solidary creditor are combined does not extinguish the obligation, except to the extent of the cocreditor's share.

CHAPTER IV

RELEASE OF DEBT

339 Release of a debt is either express or tacit.

340 Voluntary surrender by the creditor to his debtor of the original title to an obligation creates a presumption of release of the debt.

341 Voluntary surrender of the title to a debt to one of the solidary debtors creates a presumption of release of the debt with regard to all.

342 Release of a debt granted to one of the solidary debtors discharges the others only to the extent of their share.

343 Release of a debt granted by one of the solidary creditors discharges the debtor only to the extent of the share of that cocreditor.

344 Release of security granted by a creditor does not create a presumption of release of the secured debt.

345 Release granted to one of the sureties discharges the others to the extent of the recourse they would have had against the released surety.

However, anything a creditor receives from a surety for his discharge is not imputed to the discharge of the principal debtor or of the other sureties.

CHAPTER V

IMPOSSIBILITY OF EXECUTION OF OBLIGATIONS

346 A debtor of an obligation is discharged when its execution becomes impossible by reason of a fortuitous event.

A debtor who is bound to execute his obligation despite a fortuitous event may not avail himself of this article.

347 The debtor so discharged may not demand execution of the creditor's correlative obligations; if they have been executed, there may be restitution.

When the debtor has executed part of his obligations, the creditor is bound to the extent to which he has benefited.

348 A contract is resolved or resiliated of right when either party is discharged from the execution of his obligations by reason of a fortuitous event.

If the execution of an obligation has become partially impossible by reason of a fortuitous event, the court may, according to the circumstances, resolve or resiliate the contract, or uphold it and reduce the obligations of the other party proportionately.

CHAPTER VI

EXTINCTIVE TERMS

349 An obligation whose duration is determined by law or by the parties is extinguished by expiry of the term.

TITLE SEVEN

NOMINATE CONTRACTS

CHAPTER I

SALE

Section I

Sale in general

§ - 1 General provisions

350 Sale is a contract by which the vendor, for a price in money, transfers property to the purchaser.

351 This chapter applies to every onerous contract for the alienation of a thing.

352 A person entrusted with selling or administering property belonging to another, or supervising its administration, may not purchase that property.

353 No person may sell his property for a price paid out of a fund which he administers or the administration of which he supervises.

354 The nullity resulting from Articles 352 and 353 does not apply to any public auction made under judicial authority, except as regards the public officer entrusted with the sale.

355 The persons deprived by Articles 352 and 353 of the power to buy or sell may not invoke the nullity resulting from the violation of these provisions.

356 Notwithstanding Article 24, the owner may sell the

property which he was previously obliged to sell to another person.

The beneficiary of the promise may then recover damages from the purchaser in bad faith and from the vendor.

357 The sale of a thing belonging to another may be annulled at the request of the purchaser, unless the vendor acquires ownership of the thing before the action is instituted, and unless the owner can no longer claim it.

358 Any amount paid on the occasion of a promise of sale or of purchase is presumed an instalment on the price.

An option of withdrawal must be expressly provided.

§ - 2 Obligations of the vendor

I - General provisions

359 A vendor is bound to:

1. guarantee the right of ownership;
2. deliver the thing;
3. warrant against latent defects.

360 A vendor may not exonerate himself from his personal acts.

This provision is imperative.

361 Unless the purchaser buys at his risk and peril, the vendor may not exclude or limit his responsibility if he has not disclosed the defects in the title or in the thing, of which he knew, or which he could not ignore.

This provision is imperative.

362 Damages for inexecution of the vendor's obligations may be claimed by way of reduction of the price or otherwise.

II - Guarantee of the right of ownership

363 The vendor guarantees that the thing is free of all rights except those which he declared at the time of the sale.

364 The vendor is bound to purge the thing of all security, even declared, unless the purchaser has assumed the debt so secured.

365 The vendor must surrender to the purchaser the title deeds which he has in his possession.

366 A purchaser who discovers a risk of eviction may, at the same time, call into warranty both the vendor and any previous warrantor.

III - Delivery

367 The vendor delivers by giving the purchaser possession of the thing, or by agreeing to his taking possession, all obstacles being removed.

368 The vendor is bound to deliver the thing in the state in which it was at the time of the sale.

369 The vendor is bound to deliver the thing with all its accessories and everything intended for its perpetual use.

370 The vendor is bound to deliver the quantity specified in the contract, unless the certain and determinate thing has obviously been sold as an entity, without regard to quantity.

371 A vendor who has granted a term for payment is not bound to deliver the thing if, following the sale, the purchaser has lost the benefit of the term.

372 The vendor assumes the costs of delivery.

IV - Defects in the thing

373 The vendor is bound to warrant the purchaser against latent defects existing at the time of the sale, which render the thing unfit for the use for which it was intended or which diminish its usefulness to such an extent that, had the purchaser been aware of the defects, he would not have purchased the thing or would not have paid so high a price.

374 The vendor is not responsible for any apparent defects.

An apparent defect is one which a diligent purchaser can perceive without expert assistance.

375 Latent defects give the purchaser a right to annulment of the contract or to reduction of the price, according to the circumstances.

Whether or not the latent defects are known to the vendor, the purchaser may also claim for damages or join these recourses.

376 If a thing perishes because of latent defects which existed at the time of the sale, the vendor bears the loss.

If a thing which has latent defects perishes through the fault of the purchaser or through a fortuitous event, the purchaser must deduct from his claim the value of the thing at the time of the loss.

377 The purchaser must notify the vendor in writing of the defects or lack of conformity in the thing within ninety days after discovery.

The notice given after that period is still valid and an action can be maintained if the purchaser provides a reasonable excuse for his delay.

378 A sale under forced execution does not give rise to any recourse by reason of latent defects.

§ - 3 Obligations of the purchaser

379 The purchaser is bound to pay the price, to take delivery of the thing and to pay the removal expenses.

380 The purchaser is bound to pay the price at the time and place of delivery.

381 The purchaser is bound to pay interest on the price from the time of delivery if the thing is of such a nature as to yield fruits or income.

382 The purchaser is bound to pay the expenses related to the deed of sale.

§ - 4 Special provisions concerning sale of moveable property

383 Sale of a certain and determinate moveable thing makes the purchaser owner of it by the sole consent of the parties.

The same applies when moveable things are sold in bulk, even if an operation remains necessary to determine the price.

384 Sale of a moveable thing determined only as to kind makes the purchaser owner as soon as he is informed that the thing is certain and determinate.

385 If a person sells the same moveable thing to different purchasers successively, the purchaser in good faith who is first given possession owns the thing, although his title may be later in date.

386 When the price is not determined by the contract, or

cannot be determined by it, the purchaser must pay the price usually required in similar circumstances.

387 When a thing belonging to another is sold, the owner may revendicate it from the purchaser, unless the sale was made under judicial authority or unless the purchaser can set up acquisitive prescription.

388 If the purchaser does not pay the price and does not accept delivery of the thing, the vendor may consider the sale resolved, in accordance with the rules in this Book governing resolution of contracts.

389 The sale of a thing on trial is presumed made under a suspensive condition.

When no period has been stipulated for the trial, the condition is fulfilled once the purchaser has failed to advise the vendor of his refusal within thirty days after receipt.

§ - 5 Special provisions concerning sale of immoveable property

390 Sale of immoveable property makes the purchaser owner of it by the sole consent of the parties.

However, the sale has no effect with respect to third parties except in accordance with the Book on *Publication of Rights.*

391 A sale obliges the parties to pass the deed required for the publication of ensuing rights.

392 The parties share the property taxes for the current year according to local usage.

393 A vendor is responsible for any encroachment by him or by a third party, unless he has declared it.

394 The vendor is responsible to the purchaser for any violation of the law and of regulations in the construction or use of the immoveable property at the time of the sale, unless the vendor has declared the violation.

395 The vendor must furnish the purchaser with a copy of his deed of acquisition, any previous titles which he has in his possession, and a certificate of search covering the previous twenty-five years.

396 The vendor must cause to be cancelled the registration of extinguished rights, and of those which he has not declared and which are of such a nature as to diminish the right transferred to the purchaser.

397 Subject to Article 370, the vendor is bound to deliver the surface area mentioned in the contract, whether the price is according to measurement or for the whole.

If the delivery cannot be made, the purchaser is entitled to a reduction in the price.

If the surface exceeds that mentioned in the contract, the purchaser must pay for the excess or restore it to the vendor.

If the difference in surface causes the purchaser serious damage, he is entitled to resolution.

Section II

Special rules governing certain sales

§ - 1 Auction sales

I - General provisions

398 An auction sale is one by which a thing is adjudicated to the last and highest bidder.

399 An auction sale may be voluntary or forced.

400 The conditions of sale cannot be set up against the successful bidder unless the auctioneer communicates them to the persons present before he receives any bids.

401 The auctioneer must reveal the identity of the vendor before he receives any bids; if he fails to do so, he is personally bound to all the obligations of a vendor.

Any stipulation to the contrary is without effect.

402 Entry of the successful bidder's name and bid in the auctioneer's register makes proof of the sale.

If no such entry is made, proof by testimony is admissible.

403 If the purchaser fails to pay the price in compliance with the conditions of the sale, the auctioneer, in addition to the ordinary recourses of a vendor, may resell the thing for false bidding, according to usage and after sufficient notice.

404 The false bidder must pay the difference between the price awarded him and the lesser resale price, but he may claim no excess.

He is responsible towards the vendor, the seized debtor and the judgment creditors for all interest, costs and damages arising from his default.

405 No false bidder may bid again.

406 When immoveable property is adjudicated, the vendor and the successful bidder must pass the deed of sale contemplated in Article 391 within ten days from the request of either party.

407 A successful bidder who claims to act for another

person, but does not reveal the name of his principal, or who exceeds the limits of his mandate, is personally bound to the obligations of a purchaser.

II - Special provisions governing forced auction sales

408 A forced auction sale is subject to the Code of Civil Procedure.

409 In addition to his recourse against the seizing party, a successful bidder evicted following annulment of a forced sale may recover the price he paid from the debtor, with interest and costs of title; he may also recover the price, with interest, from the creditors who have collected it.

410 An evicted successful bidder may claim from the seizing creditor the damages which result from any irregularity in the seizure or the sale.

§ - 2 **Bulk sale**

411 A bulk sale is one which has as its object all or a substantial part of a commercial, industrial, professional or other enterprise, and which is made outside the vendor's regular activities.

412 When a sale is made by auction of lots or of a whole, the auctioneer, before parting with the purchase price, must observe the formalities imposed on the purchaser by Articles 413 to 422.

413 The purchaser, before the sale, must obtain a solemn or sworn statement from the vendor giving the name and address of each of the vendor's creditors and indicating the amount and the nature of each debt, and the security attached to it.

414 When the aggregate of the debts mentioned in the vendor's statement does not exceed ten thousand dollars, the

purchaser is exempt from the formalities provided for in Articles 415 to 422.

415 When the sale price, or that part of it payable in cash, is not sufficient to pay fully the creditors mentioned in the statement, the purchaser must obtain written approval, before the sale, of at least sixty percent in number and value of those creditors whose claim is of four hundred dollars or more.

These creditors then may designate a person to whom the purchaser must pay the price for purposes of distribution.

416 The creditor must assess his security and give written notice of the assessment to the purchaser.

If he does not assess his security or if the assessment exceeds the amount of his claim, his claim is not counted for the purposes of Articles 417 to 422.

For the purposes of Articles 417 to 422, a claim which exceeds the amount of the assessment is deemed equal to the excess.

417 Fifteen days after the sale, the purchaser submits to the vendor the claims of all creditors not mentioned in the statement.

He pays those mentioned in the statement and any others whose claim has been approved by the vendor.

The purchaser retains an amount equal to that of the claims not approved by the vendor and remits the balance to him.

418 When the sale price, or that part of it payable in cash, is less than the aggregate of the debts mentioned in the statement or approved by the vendor, the purchaser must remit the price to the person designated for distribution among the creditors.

419 The person designated by the creditors or by the court, as the case may be, makes out a distribution slip and so advises the creditors.

If there is no contestation, he pays the creditors fifteen days after the notice is sent out.

420 When the purchaser has observed the necessary formalities, the creditors of the vendor have no recourse against the property sold or against the purchaser.

They nevertheless retain their recourses against the vendor.

421 When the required formalities have not been observed, a bulk sale may not be set up against the vendor's creditors at the time of the sale, and the purchaser is liable towards the creditors up to the value of the property of which he has taken possession.

422 The court, upon motion, may:

1. decide any dispute as to the amount of a claim made in accordance with the preceding articles, or as to any assessment which a secured creditor makes of his security;
2. exempt the purchaser from all or any of the formalities provided for in the preceding articles;
3. appoint the person to whom the sale price must be given for distribution to creditors when they have designated no such person under Article 415;
4. decide any other questions relating to the application of Articles 411 to 421.

423 Articles 411 to 422 do not apply to:

1. a sale made by a public officer acting under judicial authority;
2. a sale where the purchaser assumes the debts and

continues the vendor's entreprise, and notifies the creditors of the sale;

3. a creditor who waives the benefit of these provisions.

§ - 3 **Sale of debts**

424 A sale of a debt includes all the accessories such as interest accrued and security.

425 A salary or support may not constitute the object of a sale, unless it is exigible.

426 The vendor of a debt guarantees that the debt exists and is owed him, even if the sale is made without warranty, unless the purchaser buys at his risk and peril or was aware of the uncertain nature of the debt.

427 When the vendor guarantees the solvency of the debtor by a simple clause of warranty, the warranty applies only to the solvency at the time of the sale and to the extent of the price received.

428 Sale of all or part of a debt may not render the debtor's obligations more onerous.

429 The sale of a debt secured by immoveable property is governed by Article 391.

430 Subject to the rules governing publication of rights, a sale has no effect with regard to third parties and to the debtor unless the debtor has received a copy of the deed of sale, or evidence of the sale which can be set up against the vendor, or unless he has agreed to the sale.

431 If the debtor, notwithstanding his diligence, cannot be found in Québec, the sale has effect with regard to third parties and to the debtor upon publication of a single notice of sale in accordance with Article 139 of the Code of Civil Procedure.

432 Subject to the rules governing publication of rights, sale of a universality of debts, present or future, has effect as regards third parties upon the deposit in the central register of moveable rights of a copy of the deed of sale, or any evidence of the sale which can be set up against the vendor.

However, the sale has no effect with regard to the debtor unless the requirements of Articles 430 or 431 have been complied with.

433 Notwithstanding Articles 430, 431 and 432, payment made in good faith by the debtor or by a surety to the ostensible creditor is valid.

434 When a copy of the deed of sale or of any evidence of the sale which may be set up against a vendor is delivered only upon service of the action brought against the debtor, no legal costs may be charged against the debtor if he pays within the delays for appearance.

435 The sale has no effect against a surety unless the requirements of Articles 430, 431 and 432 have been met with regard to him.

436 As long as the sale has no effect with regard to the debtor, he benefits from any payment made to the vendor or from any other mode of extinction of the obligation.

437 Articles 424 to 436 apply to all transfers of debts by gratuitous title.

§ - 4 Sale of rights of succession

438 A person who sells a right of succession without specifying the property affected by the right warrants only his quality as an heir.

439 The vendor returns to the purchaser the fruits or income

received, the debts collected, and the price of the things sold which were part of the succession.

440 The purchaser must reimburse the vendor for the debts and costs of the succession paid by the vendor; he must pay the vendor what the succession owes him.

He must also pay the debts of the succession for which the vendor is responsible.

441 Unless he himself is a coheir, the purchaser of rights of succession may be excluded from the partition of the succession by one or more heirs, provided he is reimbursed the price he paid, with costs and interest from the day of payment.

§ - 5 **Sale of litigious rights**

442 A right is litigious when it can seriously be contested.

443 Judges, lawyers or officers of justice may not acquire litigious rights.

However, they may not invoke the nullity resulting from the violation of the first paragraph.

444 When a litigious right is sold, the person from whom it is claimed is fully discharged once he has paid the purchaser the price, the costs, and interest on the price from the day when payment was made.

445 The preceding article does not apply to a sale made to a coheir or co-owner of the right sold, nor to a sale made to the possessor of the thing that is the object of the right.

CHAPTER II

GIFTS

Section I

Gifts inter vivos

§ - 1 General provisions

446 A gift is a contract by which the donor, without receiving compensation, transfers property to the donee.

447 The gift of a certain and determinate thing which the donor obliges himself to acquire, or of a thing determinate only as to kind which he obliges himself to deliver, makes him the donee's debtor.

448 A remunerative liberality or one with charge constitutes a gift for that portion of the value of the property in excess of that of the remuneration or the charge.

449 This chapter applies to concealed and indirect gifts.

450 There is no gift when a person renounces a right which he has not definitely acquired, or when he renounces a succession or a legacy.

451 The promise of a future gift, even if accepted, does not constitute a gift.

However, the promise obliges the person who makes it to pay the other party the value of any benefits he has conceded and the expenses incurred in consideration of the promise.

452 A gift made by a minor is null except with respect to modest sums or customary presents.

Only the minor may invoke the nullity of the act.

453 Parents and other ascendants, or tutors, may accept gifts made to minors, to persons of major age under tutorship, or to unborn children provided they are later born live and viable.

Consent thus given has the same effect as that given by a donee of major age.

454 The gift of a thing belonging to another is valid only if the donor later becomes the owner of it.

455 A gift which transfers ownership or creates an obligation only on the death of the donor, or would make the death a condition of the obligation, is absolutely null.

It may be valid as a will, however, provided it meets its requirements.

456 A gift is valid if the delivery of the property, ownership of which has already been transferred to the donee, is subject to a term, even if the term is the death of the donor.

457 A gift which takes effect partly *inter vivos* and partly on the death of the donor is subject, as the case may be, to the rules governing gifts and to those governing wills.

458 The rules governing resolution or resiliation of contracts apply to gifts, subject to the special provisions pertaining to annuities and hypothecs.

459 A gift made while the donor is deemed mortally ill is null as having been made *mortis causa*, whether or not he dies later, if it is not validated by any circumstances.

§ - 2 **Obligations of the parties**

460 The donor is only bound to transfer to the donee the right he holds in the thing.

461 The donee assumes the charges encumbering the thing.

He is also personally responsible for the hypothecary debts for which the donor is responsible.

462 The donee has no recourse against the donor because of payments he has made to free a thing given from a right belonging to a third party, or to execute a charge.

However, the donor must reimburse the evicted donee for expenses paid in consideration of the gift which exceed the benefit he received from the gift, if the eviction results from a defect in the right of ownership of which the donor was aware and which he did not reveal at the time of the gift.

The donor must also reimburse the donee for what the donee was required to pay in excess of the benefit he received from the gift.

463 The donor is not responsible for latent defects in the thing.

He is responsible, however, for the damage caused to the donee by the dangerous condition of the thing, if he was aware of the condition and did not reveal it.

464 The donor is bound to surrender to the donee the title deeds which he has in his possession.

465 The donor delivers by giving the donee possession of the thing or by agreeing to his taking possession, all obstacles being removed.

466 The donee is bound to take delivery of the thing and pay the removal expenses.

467 The donee is bound to pay the expenses related to the deed of gift.

§ - 3 Conditions and charges

468 A condition that is impossible or contrary to imperative provisions of law, public order or good morals has no effect.

It does not annul the gift.

469 The universal donee is personally responsible for all debts which the donor had at the time the gift was made.

The donee by general title is personally responsible for the same debts in proportion to what he receives.

470 However, if the things given are sufficiently described in the gift or if he has made an inventory, the donee by any title may release himself from the donor's debts by rendering an account and abandoning all that he has received.

471 The exception of particular things, whatever their number or value, in a universal gift or a gift by general title, does not exonerate the donee from payment of debts.

472 The creditors of the donor and of the donee are entitled to separation of patrimonies according to the Book on *Succession.*

473 A stipulation is without effect if it compels the donee to pay any debts or charges other than those in existence when the gift was made, or other than future debts or charges the nature of which is described and the amount of which is specified in the contract.

§ - 4 Gifts with a charge in favour of a third party

474 A gift may be accompanied by a charge or stipulation in favour of a third party.

475 When the charge benefits several persons jointly, the

death of one of them entails revertibility of his share in favour of the cobeneficiaries.

When the charge benefits several persons and determines their respective shares, the death of one of these persons does not entail revertibility of his share in favour of the survivors, saving the exceptions provided in the chapters on usufruct and on annuities.

476 The donor does not benefit from revocation or lapse of a charge.

The donee benefits from revocation or lapse of a charge unless a third party benefits from it by law, by the will of the parties or by the nature of the contract.

§ - 5 **Moveable property**

477 A gift of a certain and determinate moveable thing makes the donee the owner of it by the sole consent of the parties.

478 A gift of a moveable thing determined as to kind only makes the donee the owner as soon as he is informed that the thing is certain and determinate.

479 If a person gives the same moveable thing to several different donees successively, the donee in good faith who is first given possession is the owner, even though his title may be later in date.

§ - 6 **Immoveable property**

480 A gift of immoveable property must be established by a notarial deed *en minute*, on pain of absolute nullity.

481 A gift of immoveable property makes the donee the owner of it at the time of the gift.

However, the gift has no effect as regards third parties except in accordance with the Book on *Publication of Rights.*

Section II

Gifts made by marriage contracts

482 Gifts *inter vivos* made in marriage contracts are governed by the rules relating to gifts.

483 A gift made in a matrimonial agreement takes effect at the same time as the agreement itself.

484 Only future consorts or consorts may be donors.

485 Only future consorts, consorts, their respective children, and the issue of the union born or to be born may be donees.

The consent of the children born or to be born is presumed.

486 A contractual institution and any other gift *mortis causa* may be made only in a marriage contract.

They are governed by the rules on wills, except as to their form.

487 A contractual institution and any other gift *mortis causa* are always revocable if they are universal or by general title.

488 A contractual institution and any other gift *mortis causa* are presumed revocable if made by particular title.

If they are stipulated as irrevocable, the donor may not dispose by gratuitous title of the property given by deed *inter vivos* or by will.

489 Any stipulation inconsistent with this chapter is without effect.

CHAPTER III

LEASE OF THINGS

Section I

Rules applicable to all leases

§ - 1 General provisions

490 Lease of things is a contract by which, in return for the rent, the lessor binds himself towards the lessee to grant him the enjoyment of a thing during a certain time.

491 A lease has for its object a moveable or an immoveable.

492 A lease is for a fixed or an indeterminate term.

493 This chapter does not apply to leasing made by a person who carries on the business of lending or granting credit and who, at the request of the lessee, has acquired from a third party ownership of the property forming the object of the contract, provided that:

1. the leasing is for commercial, industrial, professional or handicraft purposes;
2. the leasing relates to a moveable;
3. the lessee has personally chosen the property;
4. the lessor transfers expressly to the lessee the warranty resulting from the sale entered into with the third party; and that
5. the transfer of warranty is accepted without reserve by the third party.

§ - 2 Obligations of the lessor

494 The lessor must:

1. deliver the thing in a good state of repair;
2. maintain the thing in a condition fit for the use for which it has been leased;
3. give peacable enjoyment of the thing for the duration of the lease.

495 The lessor, during the lease, must make all necessary repairs other than lessee's repairs.

496 The lessor must warrant the lessee against latent defects in the thing which prevent or diminish its use, whether or not they are known to the lessor.

He is also responsible for the damage sustained by the lessee.

497 The lessor may not change the form or the destination of the thing during the lease.

498 The lessor is not liable for damage resulting from disturbance of enjoyment of the thing by the act of a third party, subject to Articles 523 and 524.

However, if the enjoyment of the thing is diminished, the lessee retains his other recourses against the lessor.

499 The lessor is bound to warrant the lessee against disturbances to his right.

500 If the lessor, through his fault, fails to execute an obligation, the lessee is entitled to exercise the recourses in Articles 254 and following.

501 If the court has granted a reduction of rent, the lessor is entitled to re-establish the rent for the future once he has remedied the situation.

502 If the lessor fails to make the repairs and improvements

which he is required to make, the lessee, without prejudice to his other rights and recourses, may withhold the rent until they are made.

503 The lessee must render an account to the lessor of the repairs or improvements made and deliver to him vouchers for the expenses incurred.

§ - 3 Obligations of the lessee

504 The lessee must:

1. use the thing with prudence and diligence;
2. pay the rent;
3. return the thing when the lease expires.

505 The lessee may not change the form or the destination of the thing during the lease.

506 The lessee may not sublet all or part of the thing or transfer his lease without the consent of the lessor, who cannot refuse it without reasonable cause.

The lessor who does not answer within fifteen days is deemed to have consented.

The lessor who consents to the subletting or transfer of the lease can only require reimbursement of the expenses reasonably incurred.

507 The sublessee is bound towards the principal lessor only for the amount of the rent which he may owe at the time of seizure; he may not set up payments made in advance.

Payments made by the sublessee either under a stipulation in his lease and made known to the lessor, or in accordance with local usage, are not deemed to be made in advance.

508 The lessee is responsible for the damage and losses which happen to the thing unless he proves that they occurred without his fault or that of persons he allowed to have access to it or use of it.

509 The lessee must permit the lessor to ascertain the condition of the thing.

The lessor must exercise this right in a reasonable manner.

510 The lessee must return the thing in the condition in which he received it, with the exception of changes resulting from normal aging or from a fortuitous event.

511 The condition of the thing may be established by a description made by the parties.

In the absence of any description, the lessee is presumed to have received it in good condition.

512 The lessee, on the expiry of the lease, may remove improvements and additions which he made to the thing.

If they cannot be removed without deteriorating the thing, the lessor is entitled to retain them, on paying their value, or to compel the lessee to remove them.

If it is not possible to restore the thing to its original condition, the lessor keeps them without indemnity.

513 The lessee must endure urgent and necessary repairs to be made.

He is nevertheless entitled to a reduction of rent, according to the circumstances.

He is also entitled to the resiliation of the lease if the repairs are such as to cause him serious prejudice.

514 The lessor may require the lessee to temporarily vacate or to be dispossessed, in order to make necessary repairs.

The court must then fix the conditions required to protect the rights of the lessee.

515 The lessee is bound to make minor maintenance repairs.

However, he is not bound to make these repairs if they result from normal aging of the thing or a fortuitous event.

516 If the lessee, through his fault, fails to execute an obligation, the lessor is entitled to exercise the recourses provided in Articles 254 and following.

§ - 4 Termination of the contract

517 A lease for a fixed term terminates of right upon expiry of the term.

518 A party who intends to resiliate a lease for an indeterminate term must give a notice to that effect to the other party.

519 The period for giving the notice is:

1. three days for moveables;
2. one month or one week for immoveables, according to whether the rent is payable by the month or by the week.

If the rent is payable according to another term, the notice must be given within a period equal to the term or, if it exceeds three months, within a period of three months.

The notice must be in writing in the case of a lease of a dwelling.

520 A lease is not resiliated by the death of either party.

521 In an action in resiliation for failure to pay rent, the

lessee may avoid the resiliation by paying, before judgment, the rent due with interest and costs.

Section II

Special provisions respecting leases of immoveables

§ - 1 General provisions

522 A person occupying an immoveable by sufferance of the owner is presumed to be a lessee.

In this case, the term of the lease is indeterminate. It begins with occupancy and carries with it the obligation to pay a rent corresponding to the rental value.

523 The lessee must act so as not to disturb the normal enjoyment of other lessees of the same immoveable.

He is responsible to the lessor and the other lessees for damage which may result from a violation of this obligation, either on his own part or on that of persons he allows to have access to the immoveable.

The violation also entitles the lessor to ask for resiliation of the lease.

524 In the cases provided for in the preceding article, after putting the common lessor in default, the lessee disturbed in his enjoyment may obtain, if the disturbance persists, a reduction of rent or the resiliation of the lease, according to the circumstances.

He may also recover damages from the common lessor, unless the latter proves that he acted with prudence and diligence, saving the recourse of the lessor for repayment against the lessee at fault.

525 A lease is tacitly renewed for one year or for the same

term if it was originally less than one year, when after the termination of a lease with a fixed term, the lessee continues to occupy the premises for more than eight days without opposition by the lessor.

The renewed lease is a lease with a fixed term and is subject to the same rules as the latter; it is also subject to renewal.

This article does not apply to the lease of a dwelling governed by Articles 544 to 547.

526 Security given by a third party to guarantee the execution of the obligations of the lessee does not extend to the renewed or extended lease.

527 In the event of fire in the premises leased, the lessee is not liable for damages unless his fault, or that of persons whom he has allowed to have access to it, is proven.

528 After having informed or attempted to inform the lessor and if the latter does not act in due course, the lessee may undertake urgent and necessary repairs for the preservation or use of the immoveable leased.

Nevertheless, the lessor may intervene at any time to continue the work.

The lessor must reimburse the lessee for reasonable expenses thus incurred.

529 In leases with a fixed term of a year or more, the lessee must allow the premises to be visited and signs to be posted, for leasing purposes, during the three months preceding the termination of the lease.

In leases with a fixed term of less than one year, the period is one month.

Where the lease is for an indeterminate term, the lessee is bound to that obligation from the time the notice is given in accordance with Article 519.

530 A lease with a fixed term is not terminated by the voluntary or judicial alienation of an immoveable, or extinction of the lessor's title particularly by the fulfilment of a resolutive condition, the exercise of a right of redemption or of giving in payment causing resolution, the termination of usufruct or the opening of a substitution.

531 However, if the lease is not registered or is registered after the registration of the deed of alienation or of the deed under which title is granted and there remain more than twelve months of the term from the alienation or extinction of the title, the purchaser or the person who benefits from the extinction of the title may terminate it upon the expiry of twelve months by previously giving a notice in writing to the lessee.

The notice is of six months in the case of premises used for industrial, commercial, professional or handicraft purposes and three months in other cases.

532 A lease with an indeterminate term is not terminated of right by the voluntary or judicial alienation of an immoveable, or extinction of the lessor's title.

The acquirer or the person who benefits from the extinction of the title may terminate it by giving a notice in writing to the lessee in accordance with Article 519.

533 The lessor may obtain the eviction of the lessee who continues to occupy the premises after termination of the lease or after the date agreed upon during the lease.

534 The lease is resiliated by expropriation of the thing.

In the case of partial expropriation, the lessee, according

to the circumstances, is entitled to a reduction of rent or to the resiliation of the lease.

In no case may the lessee claim damages from the lessor.

§ - 2 Special provisions respecting leases of dwellings

I - General provisions

535 Articles 535 to 573 apply to the lease of a dwelling regularly occupied as a place of habitation, with its services, accessories and dependencies.

However, they do not apply:

1. to the lease of a room;
2. to the lease of a dwelling in which at least three rooms are regularly leased by the lessee;
3. to the lease of a dwelling used as a vacation resort.

536 They apply even if the lessee uses part of the premises for commercial, industrial, professional or handicraft purposes, provided it does not exceed one-third of the total surface area.

537 Any stipulation inconsistent with Articles 500, 502, 503, 506, 509, 513, 516, 523, 524 and 527 to 532 when they apply to the lease of a dwelling, and with Articles 538 to 573 is without effect.

538 The inefficacy of a stipulation contemplated in the preceding article does not entail nullity of the remainder of the lease.

II - Obligations of the parties

539 The lessor must deliver and maintain the dwelling in a condition fit for habitation and give peaceable enjoyment of it.

540 The lessor is bound to make all repairs imposed on him by law or by a municipal by-law respecting safety or sanitation.

The lessee has the same rights against the lessor in respect of these repairs as if the lessor had undertaken by a lease to make them.

541 Except in case of urgency and subject to his right to have a prospective lessee visit the dwelling under Article 529, the lessor must give the lessee notice of at least twenty-four hours of his intention to visit the premises in accordance with Article 509.

The lessor must also give notice of at least twenty-four hours of his intention to have the dwelling visited by a prospective purchaser.

542 The lessee must use the dwelling reasonably, and keep it clean.

543 The lessee may not, without the consent of the lessor, use or keep in the dwelling any substance which would constitute a risk of fire and have the effect of increasing the lessor's insurance premiums.

544 Every lease for a fixed term is, upon its termination, extended of right for the same period.

However, where the term is for more than twelve months, the lease may only be extended for a period of twelve months.

The parties nevertheless may agree to a different extension period.

This article does not apply to the lease granted by an employer to his employee as an accessory to a contract of employment.

545 A lessor who wishes to avoid the extension of the lease contemplated in the preceding article or to increase the rent or change any other condition for the renewal or extension of the lease must give notice in writing to the lessee.

A lessee who wishes to avoid the extension of a lease contemplated in the preceding article must give notice in writing to the lessor.

546 The notice contemplated in the preceding article must be given three months before the expiry of the term in the case of a lease for a fixed term of twelve months or more; one month or one week before the expiry of the term in the case of a lease for a fixed term of less than twelve months according to whether the rent is payable by the month or by the week.

If the rent is payable according to another term, the notice must be given within a period equal to that term or, if it exceeds three months, within a period of three months.

These notices may not be given beyond a period exceeding twice that provided for in the preceding paragraphs.

547 Either party may, for reasonable cause and with the permission of a judge, give notice after the expiry of the period referred to in the first two paragraphs of the preceding article, provided the other party does not suffer serious damage from this.

In the case of a lease contemplated by the fourth paragraph of Article 544, the lessor must give the lessee notice of at least one month to terminate the lease, whether the lease is for a fixed term or for an indeterminate term.

548 When, during a lease, the immoveable is voluntarily or judicially alienated or the lessor's title is extinguished, the new acquirer or the person who benefits from the extinction of the title has, towards the lessee, the rights and obligations resulting from the current lease.

III - Resiliation of the lease

549 The lessor is entitled to resiliation of the lease for non-payment of the rent only if the lessee has delayed for more than three weeks.

550 The lessor is entitled to resiliation of the lease when the dwelling is ruinous and becomes dangerous for the public or for the occupants.

551 The lessee may resiliate the current lease if he has obtained permission to lease a dwelling in a low rental building provided for by law.

He must give notice to the lessor three months before the date contemplated for taking possession of the dwelling in the case of a lease for a fixed term of six months or more, and one week in the case of a lease for a fixed term of less than six months.

552 The heir or legatee of a deceased lessee may resiliate the current lease.

He must notify the lessor in writing three months before the resiliation.

The notice must be given within six months after the death.

553 If the lessee leaves the dwelling before the expiry of the lease, taking his moveable effects, the lessor may make a lease with a new lessee.

The new lease entails resiliation of the former, but the lessor retains his recourse in damages against the person who has left the premises.

IV - Prohibitions

554 The lessor may only require advance payment of rent for one term or, if the term exceeds one month, payment of one month's rent.

He may not require any other amount in the form of a deposit or otherwise.

555 The lessor may not require issue of a cheque or other post-dated instrument for payment of rent except for the final term or, if the term exceeds one month, for payment of the final month's rent.

556 The following are without effect:

1. any clause to forfeit the term for payment of the rent;
2. any clause in a lease for a fixed term of twelve months or less that would directly or indirectly increase the rent during the lease.

557 In a lease for more than twelve months, the parties may agree that the rent will be readjusted in relation to any variation of the municipal or school taxes affecting the immoveable, of the unit cost of fuel or electricity in the case of a dwelling heated or lighted at the cost of the lessor, and of premiums for fire insurance and liability insurance.

The readjustment may not be made during the first twelve months of the lease and may not occur more than once during each additional period of twelve months.

If the amount of the readjustment is contested, the parties may apply to the court by way of motion.

558 The following are without effect:

1. any clause of exclusion or limitation of the liability of the lessor;
2. any agreement intended to render the lessee liable for damage caused without his fault.

559 Any penal clause in which the amount provided for exceeds the damage actually sustained by the lessor may be annulled or reduced.

560 Any agreement to alter the rights of the lessee by reason of an increase in the number of members of his family is without effect, unless the space of the dwelling warrants it.

561 Any agreement by which the lessee undertakes not to hypothecate in favour of third parties moveables furnishing the dwelling is without effect.

562 Locks allowing access to the dwelling may be changed only with the consent of the parties.

563 Any agreement by which the lessee acknowledges that the dwelling is in good condition is without effect.

V - Offences

564 If the parties agree to a written lease, the lessor, within fifteen days after it is made, must give the lessee a copy of the lease reproducing, in full and in the manner indicated there, section II of the form attached as a schedule.

565 If the parties agree to a verbal lease, the lessor, within three days after the agreement, must give the lessee a writing reproducing, in full and in the manner indicated there, section II of the form attached as a schedule.

566 The lease and writing referred to in Articles 564 and 565 must be drawn up in French or in English, at the option of the lessee.

567 The type used for the printed lease or writing referred to in Articles 564 and 565 must be of at least:

1. for marginal notes, for titles and for the word "notice" at the beginning of section II, twelve-point face on thirteen-point body bold-faced capitals;

2. ten-point face on eleven-point body for the remainder of the contract.

568 No person may refuse to make a lease with a prospective lessee or to maintain a lessee in his rights for the sole reason that he has one or more children, taking into account the space of the dwelling.

569 Any person who contravenes Articles 562 or 564 to 568 is guilty of an offence and is liable, in addition to the costs, to a fine of not more than five hundred dollars for each offence.

570 Any person who requires of the lessee any payment other than those authorized by Article 554 or 555 is guilty of an offence and is liable, in addition to payment of the costs, to a fine of not more than five hundred dollars for each offence.

571 Contravention of any of the articles mentioned in Articles 554, 555, 562 and 564 to 568 does not allow a person to demand the nullity of the lease.

572 Proceedings under Article 569 or 570 are instituted by any person authorized by the Attorney-General in accordance with the *Summary Convictions Act* and Part II of that act applies to them.

573 The court condemning a person accused of an offence mentioned in Article 569 or 570 to a fine may order the accused, at the request of the victim, to reimburse him any amount collected without right or to pay him the damages incurred by him as a result of the commission of the offence.

If the accused does not comply with the order within the period fixed by the court, the victim may have the order registered in the office of the competent civil court.

The order is then executed as any judgment of that court.

CHAPTER IV

AFFREIGHTMENT

Section I

General provisions

574 "Ship" means any type of vessel or other means of transport which is or can be used solely or partly for navigation by water, regardless of its means of propulsion.

575 With respect to the seamen and other persons in a ship, including the passengers, the master has all the authority necessary for the safe navigation, management and preservation of the ship, and for the maintenance of good order.

576 The master may jettison all or part of the cargo in the event of imminent danger, when necessary for the preservation of the ship.

577 The ship, freight and cargo, whether saved or lost, contribute rateably in general average, according to their respective values, for damages voluntarily sustained and extraordinary expenses incurred for the common safety, from the time the ship is loaded until the time it is unloaded at the port of destination.

The contribution is determined and adjusted in accordance with the practice of average adjusters.

Section II

The contract of affreightment

§ - 1 Provisions applicable to all contracts of affreightment

578 A contract of affreightment is one by which, for remuneration, the lessor undertakes to place all or part of one or more ships at the disposal of the lessee.

579 The lessee is bound to pay hire; if it has not been determined, he must pay a reasonable amount.

580 The lessee may sublet the ship.

He remains responsible, however, to the lessor for the execution of the obligations under the contract.

§ - 2 **Kinds of affreightment**

I - Charter by demise

581 Charter by demise is a contract by which the lessor leases a ship to the lessee who assumes complete possession and control of it.

The lessor may, however, impose restrictions upon the lessee with respect to the use of the ship.

582 The lessor delivers the ship in seaworthy condition and fit for the service for which it is intended, at the place and within the period of time agreed upon.

If no period of time is specified, the ship is delivered within a reasonable period.

583 The lessor is bound to make repairs and replacements on the ship because of latent defects which existed when the ship was delivered to the lessee, provided their effects appear within one year after delivery.

584 The lessee may use the ship's stores and equipment.

He may use the ship only for its normal purposes.

585 The lessee maintains the ship and makes the repairs and replacements other than those specified in Article 583.

586 The lessee hires the crew, bears all operating costs and maintains insurance coverage.

587 When the contract terminates, the lessee returns the ship to the place where it was delivered and in the state in which it was delivered, with allowance for fair wear and tear.

He then returns stores and equipment in quantity and quality identical to those received.

II - Time-charter

588 Time-charter is a contract by which the lessor places a fully-equipped and manned ship at the disposal of the lessee for a period of time.

589 The lessor retains the navigation and management of the ship and the lessee has its employment and agency.

590 The lessor delivers the ship in a seaworthy condition, fully and properly equipped and manned for the service for which it is intended, at the place and within the period of time agreed upon.

If no period of time is specified, the ship is delivered within a reasonable period.

591 The lessor is bound to follow the lessee's instructions with respect to the employment and agency of the ship.

When these instructions are inconsistent with the lessor's rights under the contract, the lessor may refuse to follow them, or he may follow them, without prejudice to his recourse against the lessee.

592 The lessee bears the costs of the commercial operation of the ship, in particular wharfage, canal and pilotage dues.

He takes over and pays for any fuel on board when the ship is delivered, and provides the necessary fuel during the charter period.

593 The lessee indemnifies the lessor for all loss or damage caused to the ship by reason of its commercial operation, except for fair wear and tear.

594 Charter hire begins when the ship is delivered to the lessee in accordance with Article 590.

It is payable except when the working of the ship is prevented by causes attributable to the lessor or by accident.

595 The lessee returns the ship to the place and within the period of time agreed upon, and gives prior notice to the lessor within a reasonable period.

III - Voyage-charter

596 Voyage-charter is a contract by which the lessor places all or part of the carrying capacity of a ship at the disposal of the lessee, for the transport of cargoes agreed upon, on one or more voyages.

597 The lessor is bound to:

1. present the ship at the place and within the period of time agreed upon;
2. exercise diligence, before and at the beginning of the voyage, to make the ship seaworthy, and properly manned and equipped for the services contemplated in the contract;
3. prosecute with diligence the voyage or voyages contemplated in the contract.

598 The lessor retains the navigation, management, employment and agency of the ship.

599 The lessor is responsible for cargo received on board in accordance with the terms of the contract, and in the absence of such terms, with Articles 643 and following.

600 The lessee is bound to provide a cargo in the quantity and quality agreed upon, which the lessor loads, stows, trims and discharges.

601 The lessee pays the lessor the freight agreed upon in the contract or, in the absence of any agreement, that fixed at a reasonable rate.

602 No freight is payable if the cargo is not delivered.

603 Freight is payable on delivery of the cargo, notwithstanding loss, damage or delay, without prejudice, however, to the recourses of the lessee.

When, for a reason not imputable to the lessor, it is impossible to complete the voyage, the lessee must pay reasonable compensation on delivery of the cargo.

604 The lessor has a right of retention on the cargo for freight, dead freight, demurrage and damages for detention.

When the cargo is delivered by the lessor to a person other than the lessee, the lessee is not responsible for freight, demurrage and damage for detention incurred at the port of discharge, except to the extent that the lessor, using diligence, is unable to obtain payment by exercising his right of retention on the cargo.

CHAPTER V

TRANSPORT

Section I

Provisions applicable to all means of transport

§ - 1 General provisions

605 A contract of transport is one by which one person undertakes principally to carry another person or a thing from one place to another.

606 A contract of transport is either onerous or gratuitous.

607 A gratuitous carrier assumes only an obligation of prudence and diligence, except in the case set forth in Article 614 respecting the transport of persons.

608 A carrier is liable for damage resulting from delay, unless he proves that he has acted with prudence and diligence.

609 A carrier for hire who offers his services to the public must carry all persons who request passage, and all goods entrusted to him for transport, unless he has reasonable cause for refusal.

610 A carrier may not exclude or limit his liability except to the extent and under the conditions established by the competent authority.

611 The client is bound to pay the fare and follow all instructions given by the carrier in accordance with the law.

§ - 2 Provisions respecting transport of persons

612 Transport of persons includes embarking and disembarking operations.

613 A carrier for hire is bound to carry his passengers to their destination.

614 A carrier is liable for any damage resulting from the death of or from any injury to his passengers during transport.

He may not rebut or attenuate that liability unless he proves a fortuitous event, the state of health of the passenger, or the fault of the passenger or of the claimant.

He remains liable, however, if the damage results from the state of his own health or of that of his employees, or from the condition or operation of the vehicle.

615 A carrier is not responsible for any hand luggage or other effects which remain in the passenger's care, unless there is proof of fault.

616 A carrier is responsible for all luggage and other effects placed in his care by a passenger, unless he proves a defect in the thing, fault of the passenger, or a fortuitous event other than theft, even armed robbery.

617 Where there is successive or combined transport of persons, the carrier who performs the transport during which the damage occurs is responsible unless, by express agreement, one of the carriers has assumed responsibility for the entire journey.

§ - 3 **Provisions respecting transport of goods**

618 Transport of goods extends from the time the carrier takes the goods into his charge for transport until the time they are delivered.

619 A bill of lading is a writing which attests to a contract for the transport of goods.

620 A bill of lading mentions:

1. the place and date of receipt of the goods, the point of departure and the destination;
2. the names of the shipper, receiver and carrier, and of the person paying the freight;
3. the nature, quantity, weight or volume, and apparent condition of the thing, and any dangerous properties it may have.

621 Pending proof to the contrary, a bill of lading makes proof of the receipt, nature, quantity and apparent condition of the goods.

622 A carrier who accepts goods under a bill of lading issued by another carrier adheres of right to the terms of the bill.

623 A bill of lading is not negotiable, unless otherwise provided by contract, by law or by regulation.

624 If a bill of lading is negotiable, negotiation is effected either by endorsement and delivery, or by mere delivery if the bill is made to bearer.

625 The holder of a negotiable bill of lading must hand it over to the carrier before requiring delivery.

626 A carrier is bound to deliver the goods to the holder of the bill of lading, when the bill is negotiable; if it is not, he is bound to deliver them to the consignee.

627 When goods are not delivered to the residence or place of business of the consignee, either under the contract or because of the act of the consignee, the carrier is bound to notify him of the arrival of the goods and of the time allowed for removal.

628 If the consignee cannot be found or if he refuses or neglects to take delivery of the goods, the carrier must so notify the shipper.

If the carrier receives no instructions within thirty days, he may dispose of the goods as though they were unclaimed.

In an emergency, the carrier may dispose of perishable goods without notice.

629 When the period of time allowed by Article 627 for removal of the goods expires, or from the notice given under the preceding article, the carrier assumes the obligations of a depositary by onerous title who must be remunerated by the shipper.

630 Without prejudice to the rights of the shipper, as soon as the consignee accepts the goods or the contract, he acquires the rights and assumes the obligations derived from the contract.

631 The carrier for hire is bound to carry the goods to their destination.

He is liable for any damage resulting from the transport unless he proves a fortuitous event, fault of the shipper or of the consignee, or a defect in the goods.

He is liable, however, for any theft of the goods, even by armed robbery.

632 No action in damages, whether the damage is apparent or not, is admissible unless a written notice of the claim has been given to the carrier within ninety days after receipt of the goods.

An action instituted within that period has the effect of a notice.

633 In the case of successive or combined transport of goods, the carrier with whom the contract was made, or the last carrier, is liable for any damage which occurs during transport, saving his recourse against the person who caused the damage.

However, the carrier is alone liable to the shipper who has chosen him.

634 A shipper is liable to the carrier and to any third party for damages resulting from his fault, from any dangerous properties of the goods which he did not reveal, from any defect in the goods, or from any omission, insufficiency or inaccuracy in his statements concerning the goods.

635 A carrier may not be held liable for any amount exceeding the value declared by the shipper.

636 A carrier is not liable for the loss or deterioration of goods of exceptional value contained in a parcel or in a passenger's luggage, unless the carrier has been given a declaration of the nature or of the value of the goods.

637 A deliberately false declaration which is misleading as to the nature of the goods, or which increases their value, exempts the carrier from any liability.

A false declaration is presumed to have been made deliberately.

638 A carrier may retain the goods transported until the freight and the transport charges are paid.

639 If, under the shipper's instructions, payment is exigible from the receiver, the carrier who does not require the payment from the consignee loses the right to claim it from the shipper.

640 If the goods are not those described in the contract, or if

their value exceeds the declared value, the carrier may claim the freight according to the tariffs.

Section II

Special provisions respecting transport by water

§ - 1 Transport of persons

641 A carrier of persons is bound to exercise all due diligence to make and keep the ship seaworthy, and to man, equip and supply it properly at the beginning of and throughout the voyage, so as to ensure the safety of the passengers.

642 Notwithstanding Article 614, the carrier is liable for the damage which results from the death of a passenger, or from any injury to a passenger, provided the claimant proves that the damage is attributable to the fault of the carrier.

However, the carrier is presumed liable when such damage results from shipwreck, collision, explosion, stranding, fire or any other major marine disaster; this presumption may be rebutted by proof of a fortuitous event or of fault of the victim or of the claimant.

§ - 2 Carriage of goods

643 The following provisions do not apply to charter-parties.

However, they do apply when bills of lading are issued in the case of a ship under a charter-party.

644 Nothing in the following provisions prevents the insertion in a bill of lading of a lawful provision regarding general average.

645 In Articles 643 to 666:

1. "contract of carriage" applies to contracts of carriage

whether covered or not by a bill of lading or any similar document of title in so far as such document relates to the carriage of goods by water, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter-party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same;

2. "goods" includes goods, wares, merchandise, and articles of every kind whatsoever, except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried;

3. "ship" means any vessel used for the carriage of goods by water;

4. "carriage of goods" covers the period from the time when the goods are loaded on to the time when they are discharged from the ship;

5. "carrier" includes the owner or the charterer of a ship who enters into a contract of carriage with a shipper.

646 Subject to Article 663, under every contract of carriage of goods by water, the carrier, in relation to the loading, handling, stowage, carriage, custody, care and discharge of the goods, is subject to the responsibilities and obligations and entitled to the rights and immunities hereinafter set forth.

647 There shall not be implied in any contract for the carriage of goods by water any absolute undertaking by the carrier to provide a seaworthy ship.

648 The carrier shall be bound, before and at the beginning of the voyage, to exercise due diligence:

1. to make the ship seaworthy;

2. to properly man, equip, and supply the ship;

3. to make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.

649 Subject to Articles 656 to 661, the carrier shall properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried.

650 After receiving the goods into his charge, the carrier, or the master or agent of the carrier, shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things:

1. the leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage;
2. either the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper;
3. the apparent order and condition of the goods.

Provided that no carrier, master or agent of the carrier shall be bound to state or show in the bill of lading any marks, number, quantity, or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received or which he has had no reasonable means of checking.

Such a bill of lading shall be *prima facie* evidence of receipt by the carrier of the goods as therein described in accordance with subparagraphs 1, 2 and 3 of paragraph 1.

651 After the goods are loaded, the bill of lading to be issued by the carrier, master or agent of the carrier, to the shipper shall, if the shipper so demands, be a "shipped" bill of lading provided that if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the "shipped" bill of lading.

At the option of the carrier, however, such document of title may be noted at the port of shipment by the carrier, master, or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted the same shall for the purpose of Articles 648 to 655 be deemed to constitute a "shipped" bill of lading.

652 The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity, and weight, as furnished by him, and the shipper shall indemnify the carrier against all loss, damages, and expenses arising or resulting from inaccuracies in such particulars.

The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

653 Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, such removal shall be *prima facie* evidence of the delivery by the carrier of the goods as described in the bill of lading.

If the loss or damage is not apparent, notice must be given within three days of delivery.

No notice in writing need be given if the state of the goods at the time of receipt has been the subject of joint survey or inspection.

In any event, the carrier and the ship are discharged from all liability for loss or damage unless suit is brought within one year after delivery of the goods or after the date on which the goods should have been delivered.

654 In the case of any actual or apprehended loss or damage, the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

655 Any clause, covenant or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with goods arising from negligence, fault or failure in the duties and obligations provided in Articles 648 to 655 or lessening such liability otherwise than as provided in the articles relating to carriage of goods, shall be of no effect.

A benefit of insurance or similar clause shall be deemed to be a clause relieving the carrier from liability.

656 Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to assure that the ship is properly manned, equipped and supplied, and to make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation in accordance with Article 648.

Whenever loss or damage has resulted from unseaworthiness, the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this article.

657 Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

1. any act, neglect or default of the master, mariner, pilot or the servants of the carrier, in the navigation or in the management of the ship;

2. fire, unless caused by the actual fault or privity of the carrier;

3. perils, danger, and accidents of the sea or other navigable waters;
4. acts constituting events not attributable to the carrier;
5. any act of war;
6. any act of public enemies;
7. arrest or restraint of princes, rulers or people, or seizure under legal process;
8. quarantine restrictions;
9. any act or omission of the shipper or owner of the goods, or of his agent or representative;
10. strikes, lock-outs, stoppage or restraint of labour from whatever cause, whether partial or general;
11. riots and civil commotions;
12. saving or attempting to save life or property during the voyage;
13. wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the goods;
14. insufficiency of packing;
15. insufficiency or inadequacy of marks;
16. latent defects not discoverable by due diligence;
17. any other cause arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

658 The shipper shall not be responsible for loss or damage sustained by the carrier or the ship resulting from any cause without the act, fault or neglect of the shipper, his agents or his servants.

659 Any deviation in saving or attempting to save life or property, or any reasonable deviation shall not be deemed to be an infringement or breach of the present section or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.

660 Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with goods in an amount exceeding five hundred dollars per package or unit, or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading.

This declaration if embodied in the bill of lading shall be *prima facie* evidence, but shall not be binding or conclusive on the carrier.

By agreement between the carrier, master or agent of the carrier and the shipper, a maximum amount other than that mentioned in this article may be fixed, provided that such maximum shall not be less than the figure above named.

Neither the carrier nor the ship shall be responsible in any event for loss or damage to or in connection with goods if the nature or value thereof has been knowingly misstated by the shipper in the bill of lading.

661 All goods of an inflammable, explosive or dangerous nature to the shipment of which the carrier, the master or the agent of the carrier has not consented, with knowledge of their nature and character, may at any time before discharge be landed at any place or destroyed or rendered innocuous by the carrier without compensation, and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment.

If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may

in like manner be landed at any place or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average if any.

662 A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities or to increase any of his responsibilities and liabilities according to Articles 643 to 666, provided such surrender or increase shall be embodied in the bill of lading issued to the shipper.

663 Notwithstanding the provisions of the preceding articles, a carrier, master or agent of the carrier, and a shipper shall in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to seaworthiness, so far as this stipulation is not contrary to public order, or the care or diligence of his servants or agents in regard to the loading, handling, stowage, carriage, custody, care and discharge of the goods carried by water, provided that in this case no bill of lading has been or shall be issued and that the terms agreed shall be embodied in a receipt which shall be a non-negotiable document and shall be marked as such.

This article applies to commercial cargos of any class during ordinary commercial operations.

664 Where under the custom of any trade, the weight of any bulk cargo inserted in the bill of lading is a weight ascertained or accepted by a third party other than the carrier or the shipper, and the fact that the weight is so ascertained or accepted is stated in the bill of lading, then, notwithstanding anything in this section, the bill of lading shall not be deemed to be *prima facie* evidence against the carrier of the receipt of goods of the weight so inserted in the bill of lading.

The accuracy thereof at the time of shipment shall not be deemed to have been guaranteed by the shipper.

665 Nothing in the present articles relating to carriage of goods by water shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to or in connection with the custody and care and handling of goods prior to the loading on and subsequent to the discharge from the ship on which the goods are carried.

666 The preceding articles shall not affect the rights and obligations of the carrier under any statute for the time being in force relating to the limitation of the liability of owners of vessels.

CHAPTER VI

CONTRACT OF EMPLOYMENT

667 A contract of employment is one by which, in return for remuneration, an employee undertakes to carry out physical or intellectual work for a limited period, according to the instructions and under the direction of the employer.

668 A contract of employment is presumed to exist whenever work is done for another.

In the absence of agreement, the remuneration is fixed by the court.

669 A contract of employment may be established or supplemented by decrees, ordinances, regulations or collective agreements, the provisions of which replace those of the contract of employment or of this chapter whenever they are more favourable to the employee.

670 A contract of employment is for a fixed or an indeterminate term.

671 The employer must take all measures appropriate to the particular circumstances of the employment to protect the life, physical integrity, health and dignity of the employee.

This article does not provide any recourse excluded by the *Workmen's Compensation Act.*

672 Pregnancy and delivery entitle an employee to a four-month leave of absence without pay.

Any stipulation incompatible with the preceding paragraph has no effect unless it is more favourable to the employee.

673 If an employee continues to work without opposition from the employer after the term expires, the contract of employment is tacitly renewed for one year or, if it was for less than one year, for an identical term.

A contract so renewed is for a fixed term; it may also be tacitly renewed.

674 A party who seeks to terminate a contract of employment of an indeterminate term must give a notice of termination to the other party.

675 Saving provision to the contrary in any decree or collective agreement, the notice must be of at least:

1. one week, two weeks or one month, according to whether the remuneration is weekly, monthly or yearly;
2. one week when the engagement is for piece work or at a given amount per hour or per day, and has lasted for six consecutive months;
3. one day in all other cases.

The above rules apply regardless of dates and other conditions of payment of the salary.

However, the court may extend the period when the nature, duration or particular circumstances of the work so justify.

676 When the contract expires, the employee may require his employer to furnish him with a certificate of employment attesting solely to the nature of his employment, the duration of his services, and the employer's name and address.

Neither the quality of the employee's work nor his behaviour can be attested to in the certificate unless he requests it.

677 A contract of employment terminates upon the death of the employee.

It may also terminate upon the death of the employer, in certain circumstances.

678 A contract of employment is not terminated by the alienation or transfer of the enterprise, or by any change in its juridical structure resulting from amalgamation or from any other cause.

The contract binds the employer's successor.

679 Either party, unilaterally and without notice, may resiliate a contract of employment for just cause, without prejudice to his recourses.

680 Any renunciation by an employee of his right to claim damages resulting from insufficient notice of termination or from abusive resiliation of the contact by the employer is without effect.

681 The parties may stipulate that, even after the contract terminates, the employee may neither compete in his own name with the employer, nor take part in any other quality in an enterprise which would be in competition with him.

This stipulation must:

1. be written in express terms;
2. be limited as to the time, place and nature of the employment;
3. not interfere unduly with the employee's earning capacity;
4. be and remain necessary to protect the legitimate interests of the employer.

This stipulation may be reduced, however, in accordance with Article 76.

Proof of the validity of the stipulation is on the employer.

682 An employer may not avail himself of a stipulation of non-competition if he has resiliated the contract without just cause, or if he himself has given the employee a just cause for resiliating it.

683 Any stipulation inconsistent with the two preceding articles has no effect unless it is more favourable to the employee.

CHAPTER VII

CONTRACT OF ENTERPRISE

Section I

General provisions

684 A contract of enterprise is one by which, in return for remuneration, a contractor undertakes to carry out material or intellectual work without subordination towards the client.

685 This chapter also applies to the sale, by a professional builder, of land which belongs to him, with a building built or to be built.

686 The contractor is bound to execute the work properly unless prevented from so doing by a fortuitous event or an act of the client.

Section II

Special provisions

687 The builder, the architect and the engineer are responsible for defects and for poor workmanship, and for the unfavourable nature of the ground, existing at the time the work is received or which begin to exist within the next three years.

Any stipulation intended to shorten the period of this warranty is without effect except in the case of temporary work which it is expressly provided will last less than three years.

688 The architect or the engineer exonerates himself from this responsibility if he proves that the defects and poor workmanship, and the unfavourable nature of the ground do not result from an error or fault in the expert appraisals or the plans he has supplied, or from failure to execute the obligation to supervise the work being performed.

The builder exonerates himself if he proves that the defects or poor workmanship result from an error or fault in the expert appraisals or the plans of the architect or engineer chosen by the client.

The engineer, the architect or the builder exonerates himself from the responsibility if he proves that the defects and poor workmanship result from decisions imposed by the

client as to the choice of ground, sub-contractors, experts, construction methods or building materials.

In matters of work done on immoveable property, any contrary provision is without effect.

689 Those persons who do not exonerate themselves from the responsibility provided for in the two preceding articles are solidarily responsible towards the client.

690 Receipt of work by the client does not extinguish his right of action for defects and poor workmanship.

However, no action is receivable unless notice has been given within ninety days after the work is received or after the defects or poor workmanship are discovered, according to whether they are apparent or concealed.

An action instituted within that period has the effect of a notice.

691 Any subsequent acquirer of the work is entitled to the rights which his predecessor had under Articles 687, 688 and 689, unless the predecessor has reserved the exercise of these rights for himself.

692 A professional builder who sells land belonging to him, with a building built or to be built, must give the purchaser a copy of the plans and specifications of the work, unless the purchaser has been given the plans and specifications by the client.

693 The client must receive the work when it is substantially completed and ready to be used for the purpose for which it was intended.

He must then pay the price, although he may retain that part of the price which corresponds to existing minor defects and poor workmanship and to any work as yet uncompleted.

694 Work done in several parts or in sections may be received in parts.

Any part of the work which has been paid for is presumed to have been received, saving agreement to the contrary.

Section III

Termination of the contract

695 The client may resiliate the contract unilaterally; when he does so, he must indemnify the contractor for his expenditures, the work done, and any profit he has lost.

696 The contractor's death does not terminate the contract.

However, if the client had contracted because of the personal qualities of the contractor, he may resiliate the contract when the contractor dies.

In this case, he must pay the value of the work done and the materials furnished, in proportion to the price agreed on, when the work and materials are useful to him.

697 The client's death does not terminate the contract unless because of the death it becomes impossible to complete the work.

CHAPTER VIII

CONTRACT FOR SERVICES

Section I

General provisions

698 A contract for services is one by which, in return for remuneration, a person undertakes to provide services for another while retaining the choice of means of performance.

699 A person who provides services must act with prudence and diligence in accordance with the rules and usage of the profession, art or craft he practises.

700 A person who provides services must act personally, unless the contract or usage provides otherwise.

In all cases, he retains the supervision and responsibility for the execution of the contract.

701 Remuneration is determined in the contract or, in the absence of agreement, according to the value of the services rendered.

702 A client must pay on demand all advances necessary for the performance of services.

Section II

Termination of the contract

703 The contract may be resiliated for just cause by either party.

However, the resiliation must be made in circumstances

such that the other party suffers as little damage as possible because of it.

704 A contract for services terminates upon the death of the person who provides the services.

705 The client's death does not terminate the contract unless his death renders execution of the contract impossible.

706 When the contract terminates before it is fully executed, the client must pay the disbursements and the value of the services rendered.

The person who provided the services must repay any advances in excess of what he has earned.

CHAPTER IX

MANDATE

Section I

General provisions

707 Mandate is a contract by which the mandator charges the mandatary to represent him in the performance of a juridical act.

708 Mandate is an onerous contract unless there is agreement or usage to the contrary.

The remuneration is determined by the contract or, in the absence of agreement, by the value of the services rendered.

709 If a mandate has as its object a contract for which special conditions as to form are required on pain of nullity, the mandate is subject to those conditions.

710 A mandate expressed in general terms confers the power to perform acts of simple administration only.

The power to perform acts other than those of simple administration must be expressly stipulated.

711 A mandatary may not make any contract on his own behalf if he has agreed to make it for his mandator.

The mandator alone may avail himself of the nullity resulting from the violation of the first paragraph.

712 A mandatary who agrees to represent, in the same act, parties whose interests conflict must so inform each of the mandators unless usage dispenses him from the obligation.

713 The person who was not aware of the double mandate may have the mandatary's act declared null, according to the circumstances, without prejudice to his recourse in damages.

Section II

Obligations of the mandatary

§ - 1 Obligations of the mandatary towards the mandator

714 The mandatary must, in all loyalty, act with prudence and diligence in the interest of the mandator.

715 If the mandate is gratuitous, the court may reduce the amount of damages for which the mandatary is liable.

716 The mandatary is responsible for the person whom he appoints to replace him in the execution of the mandate, when he has not been authorized to do so.

When he has been authorized to do so, he is also responsible if he appoints a person whom he knew or should have known to be incompetent.

In all cases, the mandator has a direct action against the person substituted by the mandatary.

717 A mandatary may not use for his own purposes the property received in the execution of a mandate.

He must pay interest on any amount which he uses for his own purposes from the day the use began; he must also pay interest on the balance due from the time he is put in default.

718 Upon termination of the mandate, the mandatary must render an account and deliver to the mandator all that he has received in the execution of the mandate, even if it is not due to the mandator, saving his right to deduct anything the mandator owes him by reason of the mandate.

If he has received a certain and determinate thing, he may retain it until reimbursement.

719 Upon termination of the mandate, the mandatary must continue everything which is a necessary consequence of his acts or which cannot be postponed without risk of harm.

720 Upon termination of the mandate, the mandator may compel the mandatary to return the document constituting the power of attorney to him unless the document is *en minute*.

§ - 2 **Obligations of the mandatary towards third parties**

721 A mandatary is not personally liable to third parties with whom he contracts on behalf of the mandator and within the limits of his mandate.

722 A mandatary who acts in his own name is bound towards a third party with whom he contracts, without prejudice to the rights of that third party against the mandator.

723 A mandatary who exceeds his powers is also bound unless he gives the person with whom he has contracted sufficient knowledge of this.

724 A mandatary who does something alone which he was entrusted to do jointly with another is presumed to have exceeded his powers.

725 A mandatary is deemed not to have exceeded his powers if he has executed his mandate in a manner more advantageous to the mandator than that agreed to.

726 A mandatary may agree with a third party to disclose the identity of his mandator within a fixed period.

If the mandatary fails to do so, he is personally bound. He is also bound if the mandator whose identity he so discloses is insolvent or under a protective regime.

Section III

Obligations of mandators

§ - 1 Obligations of the mandator towards the mandatary

727 The mandator is bound to indemnify the mandatary for the obligations contracted by the mandatary towards third parties within the limits of his mandate, and for the acts exceeding those limits when the mandator has ratified them.

728 The mandator is bound to reimburse the mandatary for advances and reasonable expenses made by him in executing the mandate, and to pay him the remuneration to which he is entitled.

If no fault is imputable to the mandatary, the sums must be paid even when the business has not been successfully concluded.

729 The mandator owes interest on the advances made by the mandatary in executing his mandate from the day the advances are made.

730 If the mandatary is not at fault, the mandator is bound to indemnify him for the damage caused him by the execution of the mandate.

§ - 2 Obligations of the mandator towards third parties

731 A mandator is liable towards third parties for the acts done by his mandatary in the execution and within the limits of his mandate, unless under the agreement or by virtue of the usage of trade, the mandatary alone is liable.

The mandator is also liable for any acts which exceed the limits of the mandate, if he has ratified them.

732 A mandator may not repudiate the acts of the person whom the mandatary has appointed to replace him, unless the mandator has suffered damage from such acts.

733 A mandator or, following his death, his legal representatives, are responsible for the acts done by the mandatary in the execution and within the limits of the mandate but following its extinction, when the acts are a necessary consequence of the mandate or are required to avoid any loss or damage, or when third parties are unaware of the extinction.

734 When a person has given reasonable cause to believe that another person was his mandatary, he is liable, as though there had been a mandate, towards any third parties who contracted in good faith with the supposed mandatary.

735 A mandator is responsible for the damage caused by the fault of the mandatary in the execution of his mandate.

736 After a mandator has revealed to a third party the mandate that he has conferred, he may directly sue the third

party for the execution of the obligations contracted by him towards the mandatary who had acted in his own name.

However, the third party may plead incompatibility of the mandate with the terms or the nature of his contract and the means which can be invoked against the mandator and the mandatary respectively.

If proceedings have already been instituted against the third party by the mandatary, the mandator may exercise his right only by intervening in the case.

Section IV

Termination of mandate

737 In addition to the causes of extinction common to obligations, mandate is terminated:

1. by revocation of the mandate;
2. by renunciation by the mandatary;
3. upon the death of the mandator or of the mandatary;
4. when a mandator or mandatary of major age is placed under tutorship or under curatorship;
5. when the mandator or the mandatary becomes bankrupt;
6. by extinction of the power of the mandator.

738 The appointment of a new mandatary for the same business is equivalent to revocation of the first mandate from the day when notice of the appointment is given to the first mandatary.

739 When a mandate is revoked, the mandator must pay the mandatary, in addition to the disbursements made in the execution of the mandate, the remuneration earned and any damages which may result from an unjustified revocation.

740 If the mandatary alone has been advised of the revocation, it cannot affect a third party who deals with the mandatary while unaware of the revocation, saving recourse of the mandator against the mandatary.

741 A mandatary may renounce the mandate he has accepted by so notifying the mandator.

742 A mandatary is responsible, however, for the damage caused by his unjustified renunciation.

743 A remunerated mandatary who renounces his mandate is entitled to the value of the services he has rendered.

He must return any advances which exceed his remuneration.

744 All acts performed by a mandatary who is unaware that the mandate has terminated are valid.

745 The legal representatives of a mandatary who are aware of the mandate and are able to act must notify the mandator of the mandatary's death, and do all that is immediately necessary, in any business already underway, to avoid loss.

CHAPTER X

PARTNERSHIPS

Section I

Partnerships in general

§ - 1 General provisions

746 A contract by which the parties agree to combine their efforts or resources for common profit constitutes a partnership.

747 This chapter applies to civil and commercial partnerships.

748 A partnership possesses juridical personality.

749 Registration of the contract of partnership makes proof, in favour of third parties in good faith, of the assertions it contains, until a new declaration has been registered stating that the partnership has been changed or dissolved.

Third parties may prove the contrary in any manner.

750 A partnership may be a partner in another partnership.

The same applies to companies and corporations, subject to the instrument constituting them or to the law.

§ - 2 Obligations and rights of the partners towards each other and towards the partnership

751 Each partner participates equally in the assets, profits and losses.

If the agreement determines participation only in the profits, in the assets or in the losses, this determination is presumed to apply to all three.

A stipulation which exempts one of the partners from participation in the losses may not be set up against third parties.

752 A partner owes the partnership all that he undertakes to contribute to it.

753 The rules governing lease of things apply when the contribution consists of the enjoyment of property; the rules governing sale apply when the contribution is the ownership of property.

754 A partner may not compete with the partnership for himself or on behalf of a third party.

If he does so, the partnership acquires the resulting profits, subject to any recourse which the partnership or the partners may otherwise exercise.

755 A partner may recover what he has spent for the partnership, and he is entitled to compensation for any losses he incurred in acting on its behalf.

756 Each partner, without the consent of his copartners, may associate a third party with himself in his share in the partnership.

He cannot make a third party a member of the partnership without that consent.

757 Decisions are made by the majority of the partners, regardless of the value of their interests in the partnership.

However, unanimity is required to amend the partnership contract or to discontinue the partnership.

758 Notwithstanding any stipulation to the contrary, a partner, even if excluded from the management, may inform himself as to the conduct of the business of the partnership and may consult its books and documents.

However, a partner must exercise this right so as not to hinder the partnership's operations unduly or prevent his copartners from exercising the same rights.

§ - 3 Relations of the partnership and the partners with third parties

759 With respect to third parties who deal with him in good faith, each partner is a mandatary of the partnership and

binds it for all things done in its name in the ordinary course of business.

Any agreement to the contrary may not be invoked against third parties in good faith.

760 A partnership is bound by an obligation contracted by one of the partners in his own name, only if the obligation is contracted in the course of the partnership's business or for things which are used by it.

The partnership may then exercise all rights resulting from the contracts.

The third party may, however, cumulate defences that may be opposed against the partner and the partnership, and plead that he would not have contracted had he known that the partner was acting on behalf of the partnership.

761 When the property of the partnership is insufficient, each partner is solidarily bound towards third parties along with the other partners for the obligations of the partnership incurred while he was a partner.

The same applies to obligations incurred after he has left the partnership but before this could be set up against third parties.

762 Persons who give third parties sufficient reason to believe they are partners, while they are not, are responsible as such towards those parties.

763 Silent partners and unknown partners are bound towards third parties for the same obligations as ordinary partners.

§ - 4 Termination of partnerships

764 In addition to the causes of extinction provided in Article 267 of the Book on Persons, partnerships terminate:

1. upon expiry of the term agreed upon unless it is continued by virtue of an express or tacit extension;
2. by accomplishment of its object, by the illegality of that object, or when the object becomes impossible, unless the partners continue the partnership *de facto* in order to pursue other objects;
3. by judgment;
4. when the partnership becomes bankrupt.

The partnership is then wound up.

765 A partnership continued under sub-paragraphs 1 and 2 of the first paragraph of the preceding article is presumed continued for an indeterminate period.

766 A partnership is not terminated as the result of a change in the number or person of the partners, provided at least two partners remain.

767 A partner ceases to be a member of a partnership:

1. upon his death;
2. when he becomes bankrupt;
3. upon the exercise of his right of denunciation or of withdrawal;
4. with the consent of his copartners;
5. upon his expulsion;
6. upon a judgment maintaining the seizure of his share.

768 In the cases referred to in the preceding article, a partner and his successors are entitled to the value which his share had when he ceased to be a partner.

769 As soon as the value of the share is established, it must

be paid by the partners who continue the partnership, with interest from the day the partner left the partnership.

770 In the absence of agreement on the value, any interested person, upon motion, may obtain a judgment establishing it and ordering payment by the remaining partners.

The court may defer assessment of the value of the share in the case of contingent assets or liabilities.

771 When a partnership has been constituted for an indeterminate period or for the life of one partner, or when the right of denunciation or of withdrawal has been reserved in the contract, each partner may withdraw from the partnership by giving a three-month notice.

The notice must be given in good faith and at a favourable time.

772 A partner, upon motion, may have the partnership dissolved or have a partner expelled for just cause, particularly if the other partner fails to execute his obligations, becomes unable to attend to the business of the partnership, is placed under tutorship or curatorship or is found guilty of a criminal act.

773 The value of the expelled partner's share is fixed by the judgment ordering expulsion, or upon motion under Article 770.

It is fixed as of the day determined by the judgment or, failing this, as of the day when proceedings are instituted.

774 When a partnership ends, the power of the partners to act for it ceases, except as regards any acts which are a necessary consequence of business already begun.

Nevertheless, anything done in the ordinary course of the business by a partner acting in good faith who is unaware

that the partnership has terminated binds the partnership and the other partners, as if the partnership subsisted.

775 Termination of a partnership does not affect the rights of any third party in good faith who subsequently deals with one of the partners or mandataries acting on behalf of the partnership.

776 After the debts are paid, the assets of the partnership are divided among the partners according to their shares.

777 In the absence of agreement between the interested parties, a partnership is liquidated in accordance with the *Winding-up Act*, unless there is inconsistency, subject to the partners' subsidiary liability.

Section II

Limited partnerships

778 The preceding section applies to limited partnerships, subject to this section.

779 A limited partnership consists of one or more general partners with the powers, rights and obligations of ordinary partners, and one or more special partners whose rights and obligations are defined below.

780 The name of any limited partnership must include the words "limited partnership".

When the name of the partnership includes no mention of these words, the partnership is deemed an ordinary partnership in all respects.

781 When an act of the partnership does not include the words "limited partnership", the partnership is deemed an ordinary partnership in all respects with regard to everything related to that act.

782 In addition to the penalties provided in Article 242 of the Book on *Persons*, when a limited partnership is not registered in accordance with that article, the special partners are deemed ordinary partners.

783 A special partner's contribution consists of property or services.

784 A special partner may not withdraw directly or indirectly any part of his contribution.

He may receive only his share of the profits.

785 A special partner who receives a payment which reduces the original capital is bound to repay it with interest.

786 A special partner is liable for the debts of the partnership only up to the amount of his contribution.

787 A special partner may advise the general partners as to administration.

788 Notwithstanding Article 783, a special partner may not transact any business with a third party on behalf of the partnership or allow his name to be used in any act of the partnership; if he does so, he is liable in the same manner as a general partner for any debts and undertakings of the partnership which result from his acts.

He may be declared liable for all obligations of the partnership, as a general partner, according to the importance or the number of the acts.

789 If the name of a special partner appears in the firm name, he is liable for the obligations of the partnership unless his quality as a special partner is clearly indicated.

Section III

Associations

790 An association is a non-profit partnership for its members, in whose statutes or by-laws provision is made for the admission of members other than the founders.

791 Articles 748, 749, 750, 752, 753, 755, 758, 760, 764, 765, 766, 775 and 777 of this chapter apply to associations.

792 The statutes of an association are adopted by a majority of the members present at a general meeting.

793 Saving provision to the contrary in the statutes:

1. notices calling meetings are sent to each member at the address indicated by him;
2. all decisions regarding the business of the association, the choice of directors and the expulsion of any member are taken by a majority of the members present at the general meeting.

794 Each director is deemed a mandatary of the association as regards third parties who contract with him in good faith, respecting anything done in the ordinary course of the association's business.

795 When an association's property becomes insufficient, the founders pending appointment of the directors, the directors, and any other member who in fact manages the association's affairs, are solidarily bound for the obligations of the association arising during their management.

796 Ordinary members are not liable for the association's debts beyond the contribution promised and the subscriptions due, even if the association has not been registered.

797 Notwithstanding any provision to the contrary, a

member may withdraw from an association at any time, even though it is constituted for a fixed period.

A member who withdraws remains bound to pay the contribution promised and any subscriptions due.

798 A member is not entitled to the property of an association, even following its dissolution.

799 When an association is liquidated, the directors or the liquidators, as the case may be, are solidarily bound, after payment of the debts, to use the property of the association for the purposes of the association.

If they fail to do so, the property is transferred to the Public Curator.

800 In addition to the cases contemplated in Article 764, an association terminates by a decision of the general meeting.

CHAPTER XI

DEPOSIT

Section I

General provisions

801 Deposit is a contract by which a depositor delivers a moveable thing to the depositary who undertakes to assume custody of it for a certain time.

802 Deposit is gratuitous unless usage or an agreement stipulates to the contrary.

Section II

Obligations of the depositary

803 The depositary is bound to act as regards the custody of the thing with the prudence and diligence of a reasonable person.

804 A depositary may not use the thing without permission from the depositor.

805 A depositary by gratuitous title is responsible for the loss or deterioration of the thing which arises through his fault, proof of which lies upon the depositor.

However, the court may reduce the damages according to the circumstances.

806 A remunerated depositary is responsible for the loss or deterioration of the thing unless he proves fortuitous event, fault of the depositor or a defect in the thing.

807 An innkeeper is responsible for the loss or deterioration of personal effects and baggage brought by those persons who lodge with him, unless he proves fortuitous event, fault of the depositor or a defect in the thing.

However, his responsibility is limited to five hundred dollars for each person, provided a copy of this article is posted in the room occupied by that person.

This article also applies to a person who operates a hospital or a convalescent home.

This deposit may be proven by witnesses.

808 The depositary must return the thing he has received on deposit.

809 The depositary must return the thing on demand unless a term has been agreed upon in his interest only.

810 The depositary must return the thing to the depositor or to the holder of a bill of lading, receipt or certificate which the depositary himself has issued with the consent of the depositor.

811 A depositary may not require proof that the thing belongs to the depositor or to the person to whom it must be returned.

812 The depositary must return the fruits he derives from the thing.

He owes interest on money deposited, only from the moment he is in default to return the money.

813 In the case of a gratuitous deposit, the thing is returned where it is at the time; the depositor pays the costs.

In the case of a remunerated deposit, the thing is returned where it was at the time of the deposit; the depositary pays the costs.

Section III

Obligations of the depositor

814 A depositor must pay the depositary the remuneration agreed upon, reimburse him the expenses of preservation, and indemnify him for any loss caused him by the thing.

The depositary is entitled to keep the thing until he is paid.

815 The depositor must indemnify the depositary who suffers damage by reason of the premature return of the thing.

CHAPTER XII

SEQUESTRATION

816 Sequestration is a contract by which several persons deliver a thing respecting which they are in dispute in the hands of a third party who undertakes to return it to a designated person after the dispute has ended.

817 Moveable and immoveable property may be sequestered.

818 The rules governing deposit apply to sequestration when they are not incompatible with the rules in this chapter.

819 A sequestrator may perform only acts of simple administration with respect to the thing sequestered in the absence of any agreement to the contrary or of any judicial authorization.

820 A sequestrator may not be discharged until the dispute has terminated, except with the consent of the parties or, upon motion, by the court for sufficient cause.

821 A sequestrator renders an account of his administration.

822 Judicial sequestration is subject to the Code of Civil Procedure and, if not incompatible, to this chapter.

CHAPTER XIII

LOAN

Section I

General provisions

823 Loan for use is a gratuitous contract by which the lender delivers to the borrower a thing to be used and to be returned after a certain time.

824 Loan for consumption is a gratuitous contract by which the lender delivers a thing, which is consumed by the use made of it, to the borrower who undertakes to return a thing identical in kind and quality, despite any change in its value.

825 Loan of money is a contract by which the lender delivers a sum of money to the borrower who undertakes to return it after a certain time.

826 The lender is bound to warn the borrower of any hidden defects in the thing, if he is aware of them.

827 In the absence of a term, a loan is made on demand.

828 If the debtor, through his fault, fails to execute a promise to lend, he may only be held liable in damages.

Section II

Loan for use

829 A borrower has the obligations of an administrator of the property of another, entrusted with custody of the thing.

830 A borrower may not put the thing to any use other than that for which it is intended.

831 A borrower bears the ordinary costs of maintenance.

He is entitled to reimbursement for the other expenses incurred by him in the interest of the lender, provided they were so urgent as to prevent him from notifying the lender.

832 A borrower who uses the thing for a purpose other than that for which it is intended is liable for the loss of it, even by fortuitous event.

833 The lender may reclaim the thing before the term expires if the borrower uses it in a manner other than that for which it is intended, causes its deterioration, authorizes a third party to use it, or dies.

The lender may also reclaim the thing, even before the term expires, if he has an urgent and unforeseen need of it.

834 If the thing is lost by a forfuitous event from which the borrower could have preserved it by using his own, he is liable for the loss; the same applies if, being able to preserve only one, he gives preference to his own.

835 The borrower is not liable for the loss of a thing which perishes by the sole effect of the use for which it is loaned.

836 An action to repair damage caused to the thing by the fault of a third party belongs to the owner, or to the lender or the borrower, whoever is more diligent.

Section III

Loan for consumption

837 The borrower assumes the risks of loss of the thing by a fortuitous event.

Section IV

Loan of money

838 The borrower is bound to return only the numerical sum received, notwithstanding any variation in its value.

839 A loan of money bears interest at the legal rate from the time of delivery.

840 In the absence of any express agreement, discharge of the capital includes discharge of the interest.

841 A loan of money is moreover governed by the *Consumer Protection Act.*

CHAPTER XIV

SURETYSHIP

Section I

General provisions

842 Suretyship is a contract by which one person, called a surety, undertakes towards a creditor to execute the obligation of the debtor if he fails to execute it.

A person who promises that a debtor will execute his obligation is deemed a surety.

843 This chapter also applies when a person is required, by law or by judgment, to provide a surety.

844 Suretyship may not exceed the obligation of the debtor, nor may it be contracted under more onerous conditions.

Suretyship which exceeds the principal obligation or is

contracted under more onerous conditions is not null; it may be reduced to the extent of the principal obligation.

It may be contracted for only part of the principal obligation, or under less onerous conditions.

845 Surety may be provided for a natural obligation and for an obligation from which the principal debtor can be exempted by a purely personal exception.

846 Suretyship may have as its object one or more obligations, even future or indeterminate, provided they can subsequently be determined.

The obligation of the surety is then determined by that of the principal debtor.

847 A person may become a surety without the knowledge of the debtor, and even against his will.

848 Suretyship must be in writing and in express terms.

It may not be extended beyond the time for which it is contracted.

849 A debtor required to provide a surety must provide one who has and maintains sufficient property in Québec to meet the object of the obligation, and who is domiciled in Canada; failing this, the debtor must provide another surety.

An exception to this rule is allowed when the creditor requires that a specific person act as surety.

850 A debtor required to provide a surety may furnish other sufficient security instead.

851 The court decides, upon motion, as to the capacity of the surety, the sufficiency of the property or the sufficiency of the security offered.

Section II

Effects of suretyship

§ - 1 Effects between creditor and surety

852 Except where he has bound himself solidarily, the surety is not bound to execute the debtor's obligation unless the debtor fails to execute it.

853 A surety does not enjoy the benefit of discussion.

854 A surety who has reserved for himself the benefit of discussion must exercise it in the action taken against him, indicate to the creditor which property of the principal debtor is seizable, and advance to the creditor the expenses required for the discussion.

§ - 2 Effects between debtor and surety

855 A surety who has bound himself with the consent of the debtor may claim from the debtor all that he has paid in principal, interest and costs.

856 A surety who has bound himself without the knowledge, or against the will of the debtor, is entitled, upon payment, to recover only the amount which the debtor would have been bound to pay if there had been no suretyship, save the costs subsequent to the notice of payment, which are borne by the debtor.

857 A surety who has paid a debt without notifying the principal debtor of the payment has no recourse against the principal debtor who subsequently paid the debt.

When the surety has paid without being sued and has not notified the principal debtor, he has no recourse against that debtor if, at the time of payment, the debtor had the means of having the debt declared extinct.

In all cases, the surety retains the right to recover from the creditor.

858 A surety who has bound himself with the consent of the debtor may take action against that debtor, even before paying, to compel him to pay when:

1. the surety is being sued for payment;
2. the debtor is insolvent;
3. the debtor has bound himself to effect his discharge to the surety within a certain time;
4. the creditor has granted the debtor a delay.

859 A surety is not discharged by a mere extension of the term granted by the creditor to the principal debtor.

§ - 3 **Effects between sureties**

860 A surety who has paid has recourse against the other sureties in accordance with the Book on *Obligations*.

Section III

Extinction of suretyship

861 Suretyship terminates upon the death of the surety, notwithstanding any provision to the contrary.

However, the heirs are responsible for all existing debts, even if the debts are subject to a term or a condition.

862 If suretyship has been contracted for an indefinite period or an indefinite amount, it may be terminated by the surety after five years, upon notice given by him to the debtor, the creditor and the other sureties.

This provision is imperative.

863 The surety is discharged when, through an act of the creditor, he can no longer be subrogated in the rights of that creditor.

864 When the debtor gives something in payment and the creditor accepts it, the surety is discharged, even if the creditor is later evicted.

CHAPTER XV

INSURANCE

Section I

General provisions

§ - 1 The nature and classes of insurance

865 An insurance contract is one by which, for a premium or assessment, the insurer undertakes to make a payment to the insured or to a third party if an event that is the object of a risk occurs.

866 Insurance is divided into marine insurance and non-marine insurance.

867 Marine insurance covers risks pertaining to marine adventures.

868 Non-marine insurance is divided into insurance of persons and damage insurance.

869 Insurance of persons deals with the life, health or physical integrity of the life insured.

870 Insurance of persons is individual or group insurance.

871 Group insurance of persons, under a master policy,

covers the participants in a specified group and, in some cases, their families or dependents.

872 Life insurance guarantees payment of the agreed amount on the death of the life insured, on his surviving a specified period, or on the occurrence of an event related to his existence.

Life annuities and annuities certain issued by insurers are likened to life insurance and are also governed by the chapter on annuities.

873 Insurance within one class but inserted in a contract of another class is governed by the rules of the main class of insurance involved.

874 Damage insurance protects the insured from the consequences of an event that may adversely affect his patrimony.

It includes insurance of things, the object of which is to indemnify the insured for material loss sustained by him, and liability insurance, the object of which is to protect him from the pecuniary consequences of an act for which he may be liable in damages.

875 A reinsurance contract has effect only between the insurer and the reinsurer.

§ - 2 **Formation and content of contracts**

876 An insurance contract is formed when the insurer accepts the insured's application, even though he may not be informed of that acceptance until later.

877 The policy is the document evidencing the insurance contract.

It is often preceded by a cover note.

878 The insurer must provide the insured with the policy and a copy of any application made in writing.

In the event of inconsistency between the policy and the application, the application makes proof of the contract, unless the insurer has indicated the inconsistencies in writing to the insured.

879 The policy must indicate:

1. the names of the parties to the contract and of the persons to whom the sums insured are payable, or means of identifying them;
2. the object and amount of the coverage;
3. the nature of the risk;
4. the time from which the risk is covered and the term of the coverage;
5. the amount or rate of the premiums and the dates when they are due.

880 Any general clause releasing the insurer in the event that the law or regulations are violated is without effect, unless that violation constitutes an indictable offence.

881 Subject to provisions peculiar to marine insurance, the insurer may not invoke conditions or representations which are not written in the contract.

882 Any change made by means of an endorsement is part of the contract.

However, an endorsement stipulating a reduction of the liability of the insurer has no effect unless the insured consents to it in writing.

883 Representations of a participant in group insurance of persons may be invoked against him only if the insurer has provided him with a copy of them.

884 Participating certificates in mutual associations may establish the rights and obligations of their members by reference to the statutes and by-laws of the association.

Only those articles of the statutes and by-laws of the association that are clearly indicated in references on the participating certificates, in accordance with government regulation, may be invoked against the members.

Any member is entitled to a copy of the statutes and by-laws in force.

§ - 3 Representations and warranties of the insured in non-marine insurance

885 The insured, and the life insured if the insurer requires it, is bound to represent all the facts known to him which are likely to influence a reasonable insurer materially in the setting of the premium, the appraisal of the risk or the decision to cover it.

886 The obligation respecting representations is deemed met if the facts are substantially as represented and there is no material concealment.

There is no obligation to represent facts known to the insurer, or which because of their notoriety he is presumed to know, except in answer to questions.

887 Subject to Articles 888 and 901 to 906, misrepresentations or concealments by either the insured or the life insured, with respect to the facts contemplated in the two preceding articles, nullify the contract at the instance of the insurer, even for losses not connected with the risks so misrepresented or concealed.

888 In damage insurance, unless the bad faith of the insured is established, the insurer is liable for the risk in the proportion that the premium collected bears to that which he should have

collected, except where it is established that he would not have covered the risk if he had known the true facts.

889 A breach of warranty aggravating the risk suspends the coverage.

The suspension ceases when it has been remedied or when the insurer has acquiesced.

890 When the representations contained in the insurance application have been entered in it by the representative of the insurer or by any insurance broker, proof may be made by testimony that they do not correspond to what was actually represented.

§ - 4 Imperative provisions

891 Any stipulation which derogates from Articles 878 to 884, 886, 890 to 897, 899, 901 to 905, 920, 926, 928, 929, 932, 939 to 944, 952, 954 to 956, 959, 969, 974 to 977, 980 to 982, 996 to 1000, 1011, 1013, 1022, 1046 and 1061 is without effect.

Except to the extent that it is more favourable to the insured or to the beneficiary, any stipulation which derogates from Articles 885, 888, 889, 906 to 919, 921 to 925, 927, 958, 961, 962 to 965, 967, 968, 970, 972, 973, 978, 983, 985 to 988, and 991 to 994 is without effect.

Section II

Insurance of persons

§ - 1 General provisions

I - Contents of policy

892 In addition to the particulars mentioned in Article 879, a policy of insurance of persons must, if applicable, indicate:

1. the name of the life insured or means of identifying him;
2. the period granted for the payment of premiums;
3. the right of the insured to participate in the profits;
4. the method or table according to which the surrender value is established;
5. the right of the insured to the surrender value or to advances on the policy;
6. the conditions for reinstatement;
7. the right to convert the insurance;
8. the terms and conditions of payment of the sum insured;
9. the period during which benefits are payable.

893 In any accident and sickness insurance policy, the insurer must also expressly indicate the nature of the coverage stipulated in it; if the insurance is conditional upon disability, he must, in the same manner, indicate the terms and conditions of payment of the indemnities.

The insurer may not invoke exclusion or reduction clauses except those clearly indicated under an appropriate title, such as "Exclusions and Reduction of Coverage".

894 Except in the event of fraud, the insurer may not exclude or reduce the coverage in accident and sickness insurance by reason of a disease or ailment mentioned in the application, except under a clause specifically stating the name of the disease or ailment.

895 Except in the event of fraud, any general clause of exclusion or reduction of coverage in accident and sickness insurance has effect regarding a disease or ailment not declared in the application only if the disease or ailment manifests itself within the first two years of the insurance.

896 In group insurance, the insurer must issue a policy to the insured; participants and beneficiaries may examine it at the insured's office and make copies of it.

Except as otherwise permitted by government regulation, the insurer must provide the insured with writings evidencing the insurance, and the insured must distribute them to the participants.

II - Insurable interest

897 In individual insurance, the contract is null if, at the time of contracting it, the insured has no insurable interest in the life or health of the life insured.

898 A person has an insurable interest in his own life and health and in the life and health of:

1. his spouse;
2. his descendants and those of his spouse;
3. any person upon whom he is dependent for support or education;
4. his employees and staff;
5. any person in whose life and health the insured has a pecuniary interest.

899 The absence of an insurable interest does not prevent the formation of the contract of insurance if the life insured gives his written consent.

When the life insured is a minor, that consent is given by his father, his mother or his tutor.

900 Insurance may be assigned to a person whether or not he has any insurable interest in the life or health of the life insured.

III - Statement of age and risk

901 Misrepresentation of the age of the life insured does not entail nullity of the insurance.

902 In the event of misrepresentation of the age, the sum insured is adjusted in proportion to the relation between the premium collected and that which would have corresponded to the true age of the life insured.

However, in accident and sickness insurance, the insurer may instead choose to adjust the premium to make it comply with the rates for the true age.

Where the insurance is to terminate at a given age and where the misrepresentation is discovered before the death of the life insured, termination of the insurance is determined according to the true age.

903 In life insurance, if the age of the life insured at the beginning of the insurance exceeds the limits fixed by the insurer's rates, the insurer may also seek the annulment of the contract within five years of its formation, provided he does so during the life-time of the life insured and provided the action is instituted within sixty days after the date on which the insurer becomes aware of the error.

904 In accident and sickness insurance, the true age is the only determining factor in cases where commencement or termination of the insurance depends on the age of the life insured.

905 In group insurance, misrepresentation and concealment by a participant have effect only on the insurance of the persons who are the object of it.

906 In the absence of fraud, no misrepresentation or concealment relating to anything other than the age of the life

insured may justify the annulment of insurance which has been in force for two years.

However, in the case of disability benefits, this rule does not apply if the disability begins during the first two years of the insurance.

IV - Effective date and issue

907 Life insurance becomes effective when the application is accepted by the insurer, provided it is accepted without modification, the initial premium is paid, and there has been no change in the insurability of the risk from the time the application is signed.

Acceptance by the insurer binds him even without the knowledge of the insured.

908 Accident and sickness insurance becomes effective as soon as the policy is delivered to the insured, even if it is delivered by a person other than an authorized representative of the insurer.

909 A policy issued in accordance with the application and given to a representative of the insurer for unconditional delivery to the insured is deemed delivered to the insured.

V - Premiums, advances and reinstatements

910 In life insurance, the insured is entitled to thirty days to make the payment of any premium except the initial one, during which the insurance remains in force.

The period runs concurrently with any other period granted by the insurer, but no agreement may reduce it.

Failure to pay the premium within the period granted terminates the life insurance.

911 The premium does not bear interest during the period granted, except in group insurance.

912 The insurer cannot demand any interest on the premium due or on advances, in excess of the rate fixed by government regulation.

913 When payment is made by bill of exchange, it is deemed made only if the bill is honoured when first presented.

914 No accident and sickness insurance contract may, after delivery to the insured, be resiliated for non-payment of the initial premium unless the insurer gives fifteen days' prior notice in writing.

Non-payment of premiums relating to the renewal certificates issued to the insured entails resiliation only if a similar notice is given.

915 The insurer must reinstate individual life insurance resiliated for non-payment of the premium if the insured applies to him for this within two years from the date of resiliation, establishes that the life insured still fulfils the conditions required for insurance under the resiliated contract, pays the overdue premiums, and repays the advances he has received on the policy, with interest at a rate not exceeding the rate fixed by government regulation.

In that case, the two-year period provided for in Articles 906 and 921 runs again.

916 Reinstatement of the contract is not available if the surrender value has been paid or if an option has been exercised for the reduction or extension of the insurance.

917 Any repayment that must be made for the reinstatement of a contract may be made as an advance up to the amount allowed by the contract.

918 The insurer has a right of action to obtain payment of the premiums due only in group life insurance or in accident and sickness insurance.

In individual insurance, the insurer may deduct the amount of any premium due out of the benefits payable.

VI - Payment of insurance

919 The insurer is bound to pay the sums insured and other benefits, according to the conditions of the contract, within thirty days after the required proof of loss is received.

However, in accident and sickness insurance, this period is sixty days, except with regard to benefits for loss of income due to disability.

920 The insurer may not be subrogated in the rights of the insured, the beneficiary or the life insured against third parties by reason of the loss.

921 Suicide of the life insured does not relieve the insurer of his obligations.

Any stipulation to the contrary is without effect if the suicide occurs after two years of uninterrupted insurance.

VII - Provisions applicable to accident and sickness insurance

922 Any change by the life insured to a more hazardous occupation lasting for six months or longer entitles the insurer to reduce the benefits to those payable for the new risk according to the premium fixed in the contract.

If there is a change to a less hazardous occupation, the insurer must, from the time he receives notice of it, reduce the rate of the premium accordingly or extend the insurance by applying the rate corresponding to the new risk, at the option of the owner.

923 Where benefits for loss of income under government plans or under one or more insurance contracts exceed the life insured's average income from his work during the three best remunerated years in the five years preceding the loss, the benefits are proportionately adjusted to the amount of that income but are never less than the minimum fixed by government regulation.

Except in group insurance of persons, excess premiums must be reimbursed to the insured.

924 The insured must give the insurer written notice of loss within thirty days.

The insured must also furnish the insurer, within ninety days of the loss, with all information which he may reasonably expect as to the circumstances and extent of the loss.

The life insured and the beneficiary may execute the obligations of the owner.

925 A person entitled to the benefit is not prevented from receiving it if he proves that it was impossible for him to act within the period granted and if the notification is sent to the insurer within one year of the loss.

926 The life insured must submit to a medical examination when the insurer is entitled to require this because of the nature of the disability.

927 The insurer must pay the first benefits for loss of income within thirty days of the filing of the proof of disability of the life insured, unless the contract stipulates a waiting period; in this case, the thirty days run from the end of the waiting period.

Subsequent payments are made at intervals of not more than thirty days provided that proof of loss is furnished to the insurer upon request.

VIII - Nullity of certain contracts

928 An insurance contract for funeral expenses by which, in return for a premium paid in one sum or by instalments, a person undertakes to provide services or goods upon the death of another person, to pay for funeral expenses or to set aside a sum of money for that purpose is null.

A tontine contract by which a group of persons pool a capital amount and agree that, as each of them dies, the capital will be carried forward to the survivors, is also null.

929 Thy nullity resulting from the preceding article may be invoked only by those who have paid premiums or instalments or by the Superintendant of Insurance acting on their behalf.

§ - 2 **Beneficiaries and contingent owners**

I - Conditions of the designation

930 The sum insured may be payable to the insured, the participant or a specified beneficiary.

Insurance payable to a person's succession or to his successors, heirs, legatees, testamentary executors, trustees or legal representatives under any stipulation using those expressions or similar expressions forms part of the patrimony of that person.

931 In individual insurance on the life of a third party, the insured may designate a contingent owner who will become the insured on the death of the person making the designation.

He may also designate a number of joint or successive contingent owners and specify the order in which each one will succeed the preceding insured.

932 Designations of beneficiaries or of contingent owners

may only be made in the policy or in a separate writing which may or may not be in the form of a will.

933 A designation or revocation contained in a will that is null by reason of a defect of form is not null for that sole reason.

If the will is revoked, the designation or revocation is also revoked.

934 It is not necessary that the person contemplated exist at the time of his designation, or that he then be expressly determined.

It is sufficient that, at the time the right arises in his favour, he exist or be conceived and born viable, and be recognized as the person contemplated.

935 The designation of a beneficiary is presumed made on the condition that the person contemplated exists at the time the sum insured is exigible.

The designation of a contingent owner is presumed made on the condition that the person contemplated exists when the preceding insured dies.

936 When the life insured and the beneficiary die at the same time or in circumstances that make it impossible to establish the order in which they died, the life insured, for the purposes of the insurance, is deemed to have survived the beneficiary.

Similarly, the insured is deemed to have survived the contingent owner.

937 Representation does not take place, but accretion rules between beneficiaries and between contingent owners are the same as in the case of heirs.

938 The designation of a beneficiary in the policy or in a writing other than a will is revocable.

939 The designation of a beneficiary in a will is always revocable, as is the designation of contingent owners.

940 The revocation must result from a writing but need not be express.

941 The designation or revocation made in a will does not avail against another designation or revocation subsequent to the signing of the will.

It also does not avail against a designation made before the signing of the will unless the will identifies the insurance in question.

942 The irrevocable designation of a beneficiary may only be made in the policy or in a separate writing other than a will.

943 Regardless of the terms used, any designation of beneficiaries remains revocable until received by the insurer.

944 Designations and revocations may only be set up against the insurer as from the day he receives them.

The insurer is discharged by payment in good faith to the last known person entitled to it.

II - Effects of designation

945 The beneficiary and the contingent owner are the creditors of the insurer.

However, the insurer may set up against them the causes of nullity and forfeiture that may be invoked against the insured or the participant.

946 Sums insured payable to a beneficiary do not form part of the succession of the life insured.

Similarly, contracts transferred to the contingent owner do not form part of the succession of the preceding insured.

947 The insured is entitled to the dividends even if the beneficiary has been designated irrevocably.

He is not entitled to the other benefits except with the consent of the irrevocable beneficiary.

948 Dividends and other benefits are applied to premiums due to keep the insurance in force.

949 The stipulation of irrevocable designation binds the insured even if the beneficiary has no knowledge of it.

950 Separation as to bed and board, or divorce, does not affect the rights of the spouse whether he is the beneficiary or the contingent owner.

If the designation of beneficiary is irrevocable, it may be declared forfeited in accordance with the fourth paragraph of Article 264 of the Book on *The Family.*

951 Even if the beneficiary has been designated irrevocably, the insured and the participant may dispose of their rights, subject to the rights of the beneficiary.

§ - 3 **Transfer of insurance**

952 Transfer of insurance may be set up against the insurer, the beneficiary or any other third party only from the time the insurer receives notice thereof.

When there are several transfers and designations of irrevocable beneficiaries, priority is determined by the date on which the insurer is notified.

953 An absolute transfer of the insurance confers all the rights and obligations of the transferor and entails the revocation of the revocable beneficiary and of the contingent owner.

A hypothec of insurance has effect only up to the balance of the debt, interest and accessories and entails revocation of the beneficiary or of the contingent owner only for such sums.

§ - 4 Attempts on the life of the insured

954 An attempt on the life of the life insured by the insured entails of right resiliation of the insurance and the payment of the surrender value.

955 An attempt on the life of the life insured by a person other than the insured entails forfeiture of the rights to the insurance of that person only.

Section III

Damage insurance

§ - 1 General provisions

I - Indemnity in insurance

956 Damage insurance obliges the insurer to repair only the actual loss at the time it occurs, up to the amount of the insurance.

957 The insured bears a proportional amount of the loss if the true value of the thing insured exceeds the amount of the insurance on the day the loss occurs.

958 The exclusion of losses caused by a fortuitous event or the fault of the insured is not valid unless it is expressly and restrictively set out in the contract.

However, the insurer is not liable for losses arising from the insured's intentional fault.

959 When the insurer is liable for losses caused by persons for whom he is responsible under Article 99, he is liable for the fault of those persons, whatever its nature and gravity.

960 The insurer is not liable for trade loss, diminution and loss sustained by the thing insured arising from any inherent defect in it.

II - Increase in risk

961 The insured must promptly advise the insurer of any increase in the risk specified in the contract or that resulting from events within his control and which is likely to materially influence a reasonable insurer in the setting of the rate of the premium, the appraisal of the risk or the decision to continue to ensure it.

Article 888 applies *mutatis mutandis* if a loss occurs before the resiliation of the contract or the date the notice of a new premium rate is sent by the insurer.

III - Resiliation of the contract

962 Except for transport insurance, the insurer or the insured may resiliate the contract by written notice.

The notice takes effect upon receipt if it proceeds from the insured and fifteen days after receipt, at the last known address, if it proceeds from the insurer.

963 When the right to the indemnity has been hypothecated, and the hypothec has been served on the insurer, the contract cannot be resiliated or modified to the prejudice of the creditor unless the insurer has given him prior notice of at least fifteen days.

964 When the insurance is resiliated, the insurer is entitled only to the earned portion of the premium, computed from day to day if the resiliation proceeds from him or at the short-term rate if it proceeds from the insured.

The insurer is bound to repay any over-payment.

IV - Payment of the premium

965 The insurer is entitled to the premium only from the time the risk begins, and only for its duration if the risk disappears completely as a result of an event that is not covered by the insurance.

966 The insurer may sue for payment of the premium or deduct it from the indemnity payable.

V - Notification of loss

967 The insured must notify the insurer of any loss which might involve coverage, as soon as he becomes aware of it.

Any interested person may give such notice.

968 If requested by the insurer, the insured must notify the insurer as soon as possible of all the circumstances surrounding the loss, including its probable cause, the nature and extent of it, the location of the thing insured, the rights of third parties affecting it, and any concurrent insurance.

Notwithstanding any forfeiture time limit fixed by the contract, the insured is entitled to a reasonable extension of time if it is not possible for him to execute this obligation within the time limit specified.

The insured must also, if requested by the insurer, furnish him with vouchers in support of this information and attest under oath or by solemn affirmation to the truth of the information.

If the insured fails to execute the obligations of this article, any interested person may do so in his place.

969 Any deceitful representation entails forfeiture of the rights of the person making it to any indemnity related to the risk so misrepresented.

VI - Payment of indemnities

970 The insurer must pay the indemnity within sixty days after receiving the notice of loss or the information or vouchers required by the insurer.

971 To the extent of the indemnities he has paid, the insurer is subrogated in the rights of the insured against third parties who are responsible for the loss except in the case of persons who form part of the household of the insured.

The insurer may be fully or partly released from his obligation towards the insured when, because of any act of the insured, he cannot be so subrogated.

VII - Transfer of insurance

972 The insurance contract may be transferred only with the consent of the insurer and in favour of a person who has an insurable interest in the object of the insurance.

973 In the case of the death of the insured, his bankruptcy or the transfer between co-insureds of their interest in the insurance, the insurance continues in favour of the heir, the trustee in bankruptcy or the remaining insured.

§ - 2 **Property insurance**

I - Contents of the policy

974 In addition to the information prescribed in Article 879, the policy must indicate:

1. any exclusion of coverage not resulting from the usual meaning of the words;
2. any limitation of coverage applying to specified objects or classes of objects;
3. the conditions for resiliation by the insured;
4. the conditions for reinstatement or continuation of the insurance after loss.

II - Insurable interest

975 A person has an insurable interest in a thing whenever he may sustain a direct and immediate loss by reason of its loss or deterioration.

Future and incorporeal things may be the subject of an insurance contract.

976 The interest of the insured in the thing must exist at the time of the loss.

The same interest need not exist throughout the duration of the contract.

977 Insurance of a thing in which the insured has no insurable interest is without effect.

III - Amount of the insurance

978 If the policy does not contain special valuation formulas, proof of the true value of the property insured must be established in the usual manner.

In unvalued policies, the amount of the insurance does not make proof of the value of the property.

In a valued contract, the agreed value makes complete proof, as between the insurer and the insured, of the true value of the property.

979 In the case of over-insurance made without fraud, the amount of insurance is reduced to the true value.

The insurer is not entitled to the premiums for the excess, but premiums paid or due remain vested in him.

IV - Indemnity

980 Where several valid insurance contracts have been made without fraud on the same thing and against the same risks, each produces its effects in proportion to all the insurance in force up to the amount of the loss.

981 The insurers cannot invoke the benefit of division against the insured.

The insured may sue each of them for the full amount of coverage for which the insurer has contracted, until he has been fully indemnified.

982 The indemnities exigible are apportioned among the creditors who have hypothecs on the thing insured, according to their rank and without express delegation, upon mere notice and proof by them.

Nevertheless, payments made in good faith before the notice discharge the insurer.

983 Subject to the rights of the creditors, the insurer may reserve the right to repair, rebuild or replace the thing insured.

He is then entitled to salvage.

984 The insured may not make an abandonment of the thing if there is no agreement to that effect.

985 The insured must facilitate salvage of the thing insured and inspection by the insurer.

He must in particular allow the insurer to visit the site and examine the thing insured.

§ - 3 **Provisions relating to fire insurance**

986 The insurer is liable for all losses which are an immediate consequence of fire or combustion, whatever the cause, including damage to the thing during transport or that caused by the means employed to extinguish the fire, subject to the particular exceptions contained in the policy.

987 The insurer is not liable for loss caused solely by excessive heat from a heating apparatus nor occasioned by any process involving the application of heat, when there is no fire or commencement of fire.

988 Loss caused by lightning or by an explosion of fuel, even if there is no fire, is likened to loss caused by fire.

989 The insurer is not liable for loss arising from fire or explosion caused by foreign or civil war, riot or civil disturbance, nor for that caused by a nuclear explosion or by radioactive contamination resulting from it.

990 In addition, the insurer is not liable for losses arising from fire or explosion directly caused by volcanic eruptions, earthquakes and other cataclysms.

991 The insurer is liable for damage to the thing insured caused by measures taken to save and protect it.

He is also liable for the disappearance, during the fire, of the things insured unless he proves that the disappearance is due to theft.

992 Insurance of things generally described as being in a certain place covers all things of the same kind which are in that place at the time of the loss.

993 Insurance of a furnished house and that of moveable things in general covers every class of moveables except that which is expressly excluded or that insured for only a limited amount.

994 Inoccupancy of a house does not constitute an increase in the risk if it does not last more than thirty consecutive days or if the insurance relates to a dwelling used as a vacation residence designated as such.

The same applies for the admission of tradesmen into the house to do maintenance work or repair work for a period of less than thirty days.

§ - 4 **Liability insurance**

995 Civil liability, contractual or extracontractual, may be the object of an insurance contract.

996 In addition to the particulars provided for in Article 879, a liability insurance policy must state the relation between persons and property and persons and acts entailing liability, the amounts of and exclusions from coverage, the compulsory or optional nature of the insurance and the direct and indirect beneficiaries of it.

997 The amount of the insurance is affected exclusively to the payment of third parties injured.

998 Third parties injured may sue the insured or the insurer directly.

999 The insurer is bound to take up the interest of any person entitled to the benefit of the insurance and assume his defence in any action brought against him.

A settlement made without the consent of the insurer may not be set up against him

1000 Costs and expenses of suits against the insured, including those of the defence, and interest on the amount of insurance, are borne by the insurer over and above the limits of the insurance.

Section IV

Marine insurance

§ - 1 General provisions

1001 Marine insurance may cover the assured against land risks incidental to a marine adventure, whether on inland waters or not.

It may also cover a ship in course of building or repairing, the launching of a ship or any adventure analogous to a marine adventure.

1002 In particular, there is a marine adventure when:

1. any ship, goods or other moveables are exposed to maritime perils;
2. the earning or acquisition of any freight, passage money, commission, profit or other pecuniary benefit or the security for any advances, loans or disbursements, is endangered by the exposure of insurable property to maritime perils;
3. by reason of maritime perils, civil liability may be incurred by any person interested in or responsible for insurable property.

1003 "Ship" includes the hull, materials and outfit, stores and provisions and, in the case of vessels engaged in a special trade, the ordinary fittings needed for the trade, and also the machinery and boilers, as well as bunkers and engine stores, if owned by the assured.

1004 "Freight" includes the profit which a shipowner may

derive from the use of his ship to carry his own goods as well as freight payable by a third party.

1005 "Moveable" means any moveable property other than the ship and includes money, valuable securities and other documents.

"Goods" means merchandise but not personal effects or provisions and stores for use on board or, saving usage to the contrary, deck cargo and living animals.

1006 "Maritime perils" includes the perils mentioned in the policy and those consequent on or incidental to navigation such as perils of the seas, fire, war perils, pirates, rovers, thieves, captures, seizures, restraints, detainments of kings, princes and peoples, jettison and barratry.

1007 "Arrests, captures, seizures, restraints and detainments of kings, princes, and people" refers to political or executive acts, and does not include loss caused by riot or by ordinary judicial process.

"Thieves" does not cover clandestine theft or a theft committed by anyone of the ship's company, whether crew or passengers.

1008 "Barratry" includes every wrongful act wilfully committed by the master or crew to the prejudice of the owner or the demise charterer.

"Pirates" includes passengers who mutiny and persons who attack the ship from the shore.

1009 "Average unless general" means a partial loss of the subject-matter insured.

1010 "All other perils" includes only perils similar in kind to the perils specifically mentioned in the policy.

§ - 2 Insurable interest

I - Necessity of interest

1011 Marine insurance is absolutely null if the assured has no insurable interest in the marine adventure concerned.

1012 The insurable interest must exist at the time of the loss though it need not exist when the contract is entered into.

Where the assured has no interest at the time of the loss, he cannot acquire one by any act or election after he is aware of the loss. Where the subject matter is insured "lost or not lost", the insurance is valid although the assured may not have acquired his interest until after the loss, unless at the time the contract was entered into the assured was aware of the loss and the insurer was not.

1013 Gaming or wagering contracts are absolutely null.

There is a gaming or wagering contract where the assured has no insurable interest and the contract is entered into with no expectation of acquiring one.

Policies which contain conditions like "interest or no interest", or "without further proof of interest than the policy itself" are deemed to evidence gaming or wagering contracts. The same is true of policies stipulating no benefit of salvage to the insurer where there is in fact possibility of salvage.

II - Cases of insurable interest

1014 Any person interested in a marine adventure has an insurable interest in it.

In particular, a person is interested in a marine adventure when he stands in any juridical relation to the adventure or to any insurable property at risk in it, in consequence of which he may incur liability in respect of it, may benefit by the

safety or due arrival of insurable property or may be prejudiced by its loss, damage or detention.

1015 Partial, defeasible or contingent interests are insurable.

1016 In particular, there is an insurable interest in the cases of:

1. the insurer, for the risk insured; he may re-insure himself in respect of it;
2. the master or any member of the crew, in respect of their wages;
3. the person paying advance freight insofar as it is not repayable in case of loss;
4. the assured, for the charges of any insurance effected;
5. the hypothecary debtor, for the full value of the subject-matter hypothecated;
6. the hypothecary creditor, for any sum due or to become due under the hypothec;
7. the buyer of goods, notwithstanding his right to reject them or to have them treated as at the seller's risk.

III - Extent of insurable interest

1017 Any person who has an interest in the subject-matter insured may insure it on his behalf or on behalf of a third party who has an interest in it.

1018 The owner of insurable property has an insurable interest in respect of its full value, even though some third party may have agreed, or be liable, to indemnify him in case of loss.

§ - 3 **Transfer of insurance**

1019 A marine policy may be transferred either before or after loss.

1020 The person to whom the right to an indemnity under the contract has been transferred may enforce his rights directly against the insurer.

The insurer, however, may set up any defence arising out of the contract which he would have been entitled to make against the assured.

1021 A transfer is made by endorsing the policy or in any other customary manner.

1022 When the assured has alienated or lost his interest in the property insured and has not, before or at the time he does so, expressly or implicitly agreed to transfer the contract, any subsequent transfer of it has no effect.

However, this article does not prohibit transfer of a contract after loss.

1023 Except in the case of transmission by operation of law or by succession, alienation of the property insured does not entail transfer of the insurance.

§ - 4 **Measure of insurable value**

1024 The insurable value is the value, when the policy attaches, of the subject-matter at the risk of the assured.

1025 In insurance on ship, the insurable value is the value of the ship plus the money advanced for seamen's wages, and other disbursements incurred to make the ship fit for the voyage or adventure contemplated by the policy.

1026 In insurance on freight, whether paid in advance or otherwise, the insurable value is the gross amount of the freight at the risk of the assured.

1027 In insurance on goods, the insurable value is the prime

cost of the goods insured, plus the expenses of and incidental to shipping.

1028 In all cases, the insurable value is increased by the insurance charges on the subject-matter at risk.

§ - 5 **Proof and ratification of the contract**

1029 The contract may be proven only by producing the policy.

1030 Where a policy has been effected, any customary memorandum of the contract, such as the slip and the cover note, are admissible in evidence, particularly for the purpose of establishing the true terms of the contract and of showing when the proposal was accepted.

1031 Where a contract is entered into in good faith for a third party, he may ratify it even after he is aware of a loss.

§ - 6 **Contract and policy**

I - Usage

1032 In the interpretation of the contract, regard is had to the usage prevalent in marine insurance and in the trade to which the contract relates.

II - Subscription

1033 The subscription of each insurer constitutes a distinct contract with the assured.

III - Kinds of contracts

1034 Contracts may be for a voyage or a period of time and both may be included in the same policy.

They may also be valued, unvalued or floating.

1035 Voyage contracts cover the assured from or at and from one place to another or others; in the latter case, the policy specifies "at and from".

1036 Time contracts cover the assured for the specified period.

1037 A valued contract specifies the agreed value of the subject-matter insured.

Subject to this chapter and in the absence of fraud, the agreed value makes full proof, as between the insurer and the assured, of the insurable value of the subject-matter intended to be insured, whether the loss is total or partial.

The agreed value is not conclusive for the purpose of determining whether there has been a constructive total loss.

1038 An unvalued policy does not specify the value of the subject-matter insured.

The insurable value is ascertained subsequently in the manner specified in Articles 1024 to 1028, subject to the limit of the sum insured.

1039 A floating contract describes the insurance in general terms, and the necessary particulars such as the name of the ship are established by subsequent declaration.

Declarations may be made by endorsement on the policy or in any other customary manner.

1040 The declarations must be made in the order of dispatch or shipment.

In the case of goods, declarations comprise all consignments within the terms of the policy and the value of the goods must be stated.

Omissions or erroneous declarations may be rectified even after loss or arrival, provided the omissions or declarations were made in good faith.

1041 The contract is deemed unvalued as regards the subject-matter of any declaration of value made only after loss or arrival is known.

§ - 7 Rights and obligations of the insured

I - Payment of the premium

1042 When a contract is entered into at a premium to be arranged, and no arrangement is made, a reasonable premium is nevertheless payable.

When a contract is entered into on the terms that an additional premium is to be arranged in a given event, and that event happens but no arrangement is made, a reasonable additional premium is nevertheless payable.

1043 When a policy is effected by a broker, he is liable to the insurer for the premium.

Similarly, the insurer is liable to the assured for the amount which may be payable in respect of losses or of return of premium.

1044 The broker has against the assured a right of retention on the policy for the amount of the premium and his charges for effecting the policy.

In addition, where he has dealt with a person as if that person was a principal, he also has a right of retention on the policy in respect of any balance on any insurance account which may be due to him from that person, unless, when the debt was incurred, he had reason to believe that that person was only acting on behalf of a third party.

1045 Where a policy effected by a broker acknowledges receipt of the premium, the acknowledgement in the absence of fraud makes full proof, as between the insurer and the assured, but not as between the insurer and the broker.

II - Disclosures and representations

1046 The formation of the contract requires the utmost good faith.

If it is not observed by one party, the other may apply to have the contract annulled.

1047 The assured must disclose, before the contract is formed, all circumstances known to him and which are likely to materially influence a reasonable insurer in the setting of the premium, the appreciation of the risk or the decision to cover it.

Every representation likely so to influence a reasonable insurer and made by the assured during the negotiations for the contract must be true.

1048 Except in answer to questions, the assured is not bound to disclose circumstances which diminish the risk or which it is superfluous to disclose by reason of any express or implied warranty.

Likewise, he is not bound to disclose matters of common notoriety or knowledge nor circumstances which are known to the insurer or as to which information is waived by him.

1049 A representation as to a matter of fact is deemed true if the difference between reality and what is represented would not materially influence the judgment of a reasonable insurer.

A representation as to a matter of expectation or belief is deemed true if it is made in good faith.

1050 Where insurance is effected for the assured by a party acting on his behalf, that party is subject to the same obligations as the assured with respect to disclosures and representations.

That party is deemed to know every circumstance which in the ordinary course of business ought to have been communicated to him.

However, he is not charged with non-disclosure when the circumstance has come to the knowledge of the assured too late to be communicated to him.

1051 Assureds and insurers, as well as parties acting on their behalf, are deemed to know all circumstances which, in the ordinary course of their business, they ought to know.

1052 Representations may be corrected or withdrawn before the contract is entered into.

1053 If the assured fails to make a disclosure or if a representation is untrue, the insurer may have the contract annulled, even for losses not connected with the risks misrepresented or not disclosed.

1054 Whether or not a particular non-disclosure or representation is likely to materially influence a reasonable insurer is a question of fact.

1055 "Circumstance" includes any communication made to, or information received by, the assured.

III - Warranties

1056 Warranties are undertakings by the assured that some particular thing will or will not be done or that some conditions will be fulfilled or whereby he affirms or denies the existence of a particular state of facts.

The latter includes necessarily an undertaking that the particular state of facts will not change.

1057 Warranties may be express or implied.

1058 Warranties must be complied with exactly, whether or not they are likely to influence materially a reasonable insurer.

If they are not so complied with, the insurer is discharged from liability as from the date of the breach of warranty, but without prejudice to any liability incurred by him before that date.

1059 The assured is not bound to comply with a warranty which has since become unlawful or which, by reason of a change of circumstances, has ceased to be applicable.

1060 Where a warranty has been breached, the assured cannot avail himself of the defence that the breach has been remedied and the warranty complied with, before loss.

1061 An express warranty may be in any form of words from which the intention to warrant can be inferred.

An express warranty must be included in or written upon the policy or contained in some document incorporated by reference into the policy.

An express warranty does not exclude an implied warranty, unless it is inconsistent with it.

1062 An express warranty as to the neutrality of a ship or goods includes an implied warranty that the property will have a neutral character at the commencement of the risk, and that, so far as the assured can control the matter, its neutral character will be preserved during the risk.

1063 An express warranty as to the neutrality of a ship includes an implied warranty that, as far as possible for the

assured, the ship will carry the necessary papers to establish its neutrality, and that these papers will not be falsified or suppressed, or simulated papers used.

If any loss occurs through breach of this implied warranty, the insurer may have the contract annulled.

1064 There is no implied warranty as to the nationality of a ship, or that its nationality will not be changed during the risk.

1065 Where the subject-matter insured is warranted "well" or "in good safety" on a particular day, it is sufficient if it is safe at any time during that day.

1066 In a voyage contract, there is an implied warranty that at the commencement of the voyage the ship will be seaworthy for the purpose of the particular adventure insured.

Where the risk attaches while the ship is in port, there is an implied warranty that, at the commencement of the risk, it will be reasonably fit to encounter the ordinary perils of the port.

Where different stages of a voyage require different kinds of or further preparation or equipment for a ship, there is an implied warranty that, at the commencement of each stage, the ship is seaworthy in respect of the preparation or equipment for the purposes of that stage.

1067 In a time contract, there is no implied warranty that the ship will be seaworthy.

However, where with the privity of the assured the ship is sent to sea in an unseaworthy state, the insurer is not liable for any loss attributable to such unseaworthiness.

1068 A ship is deemed to be seaworthy when it is reasonably fit in all respects to encounter the ordinary perils of the seas of the adventure insured.

1069 In a contract of insurance on goods, there is no implied warranty that the goods are seaworthy.

In a voyage contract on goods, there is an implied warranty that, at the commencement of the voyage, the ship is not only seaworthy as a ship, but also that it is reasonably fit to carry the goods to the destination contemplated.

1070 There is an implied warranty that the adventure insured is a lawful one and that, so far as the assured can control the matter, the adventure will be carried out in a lawful manner.

IV - Notice and proof of loss

1071 The assured must notify the insurer of any loss of such a nature as to involve the coverage, as soon as he becomes aware of it.

Any interested person may give that notice.

1072 At the request of the insurer, the assured must notify the insurer as soon as possible of all the circumstances surrounding the loss, including its probable cause, the nature and extent of the damage, the location of the property, the rights of third parties affecting it, and any concurrent insurance.

Notwithstanding any forfeiture time limit fixed by the contract, the assured is entitled to a reasonable extension of time if it is not reasonably possible for him to execute this obligation within the time limit specified.

The assured must also, at the insurer's request, furnish him with supporting vouchers.

If the assured fails to execute the obligations of this article, any interested party may do so in his place.

1073 Any deceitful representation entails forfeiture of the

rights of the person making it to any indemnity related to the risk so misrepresented.

§ - 8 **Rights and obligations of the insurer**

1074 The insurer is not bound to issue the policy until payment or tender of the premium.

1075 Where the consideration for the payment of the premium totally fails and there has been no fraud or illegality on the part of the assured, the premium is returnable to the assured.

Where the consideration for the payment of the premium is apportionable and there is a total failure of any apportionable part of the consideration, a proportionate part of the premium is, under the same conditions, returnable to the assured.

1076 The nullity of the contract entails the return of the premium, subject to Articles 1074 to 1082.

However, if the risk is not apportionable and has once attached, the premium is not returnable.

1077 When the subject-matter insured or part of it has never been imperilled, the premium or, as the case may be, a proportionate part of it, is returnable.

However, where the subject-matter has been insured "lost or not lost" and has arrived in safety at the time when the contract is concluded, the premium is not returnable unless, at that time, the insurer knew of the safe arrival.

1078 Where the assured has no insurable interest throughout the currency of the risk and the contract was effected other than by way of gaming or wagering, the premium is returnable.

1079 The premium is not returnable when the assured has an interest subject to annulment and it terminates during the currency of the risk.

1080 Where the assured has over-insured under an unvalued contract, a proportionate part of the premium is returnable.

1081 Subject to Articles 1076 to 1079, where the assured is, without his knowledge, over-insured by double insurance, a proportionate part of the several premiums is returnable.

However, if the contracts came into force at different times, and any earlier contract has at any time borne the entire risk, or if a claim has been paid on the contract in respect of the full sum insured by it, no premium is returnable in respect of that contract.

1082 Where double insurance is effected knowingly by the assured, no premium is returnable.

§ - 9 **Voyage**

I - General provisions

1083 Where the subject-matter is insured by a voyage contract "at and from" or "from" a particular place, the ship need not be at that place when the contract is concluded, but there is an implied condition that the adventure will commence within a reasonable time.

If the adventure does not so commence, the insurer may have the contract annulled, except if the assured shows that the delay was caused by circumstances known to the assurer before the contract was concluded.

1084 When the ship sails from a place other than the place of departure specified by the contract, the insurer may have the contract annulled.

The same applies where the ship sails for a destination other than that specified by the contract.

II - Change of voyage

1085 There is a change of voyage as from the time when, after the commencement of the risk, the determination to change voluntarily the destination of the ship from that contemplated by the contract is manifested.

The insurer is discharged from liability as from the time of change and it is immaterial that the ship may not in fact have left the course of voyage contemplated by the contract when the loss occurs.

III - Deviation

1086 There is deviation where the ship departs from the course of the voyage stipulated in the contract or, if none is stipulated, from the usual and customary course.

The insurer is discharged from liability as from the time of any deviation without lawful excuse and it is immaterial that the ship may have regained its route before any loss occurs.

Only actual deviation is material. Intention alone is not sufficient.

1087 Where several places of discharge are specified by the contract, the ship may proceed to all or any of them.

However, in the absence of any usage or sufficient cause to the contrary, it must proceed to them, or such of them as it goes to, in the order designated by the contract. If it does not, there is deviation.

1088 Where the contract refers only to places of discharge within a given area, but does not name them, the ship must, in

the absence of any usage or sufficient cause to the contrary, proceed to them, or such of them as it goes to, in their geographical order.

If it does not, there is deviation.

IV - Delay

1089 In the case of a voyage contract, the insurer is discharged from liability as from the time when, without lawful excuse, the adventure ceases to be prosecuted with reasonable dispatch.

V - Excuses for delay or deviation

1090 Deviation or delay in prosecuting a voyage is excused when authorized by the contract or where necessary in order to comply with a warranty.

1091 Deviation or delay is also excused where caused by circumstances beyond the control of the master and his employer or where necessary for the safety of the subject-matter insured.

1092 Deviation or delay is also permitted for the purpose of saving human lives or aiding a ship in distress where human lives may be in danger, or where necessary for the purpose of obtaining medical or surgical aid for any person on board the ship.

1093 It is also excused where caused by the barratrous conduct of the master or crew, provided barratry is one of the perils insured against.

1094 When the cause excusing the deviation or delay ceases to operate, the ship must resume its course and prosecute the voyage with reasonable dispatch.

1095 Where, by a peril insured against, the voyage is interrupted at an intermediate port or place under such circumstances as, apart from any special stipulation in the contract of affreightment, to justify the master in landing and re-shipping the goods, or in transhipping them, and sending them on to their destination, the liability of the insurer continues, notwithstanding the landing or transhipment.

§ - 10 **Losses and abandonment**

1096 The insurer is liable only for losses directly caused by a peril insured against.

1097 The insurer is not liable for any loss attributable to the wilful misconduct of the assured, but he is liable for any loss directly caused by a peril insured against, even though the loss would not have happened but for the misconduct or the negligence of the master or crew.

1098 The insurer on ship or goods is not liable for any loss directly caused by delay, although the delay may be caused by a peril insured against.

1099 The insurer is not liable for any damage to machinery not directly caused by maritime perils, nor for ordinary wear and tear, ordinary leakage and breakage, inherent vice or nature of the subject-matter insured, or for any loss directly caused by rats or vermin.

1100 A loss may be total or partial.

Any loss other than a total loss as defined in Articles 1104 to 1107 is a partial loss.

1101 A total loss may be an actual total loss or a constructive total loss.

Unless a different intention appears from the terms of

the contract, insurance against total loss includes a constructive total loss as well as an actual total loss.

1102 Where the assured brings an action for a total loss and the evidence proves only a partial loss, he may recover for a partial loss if partial losses are covered by the contract.

1103 Where goods reach their destination *in specie*, but by reason of obliteration of marks, or otherwise, they are incapable of identification, the loss, if any, is partial and not total.

1104 There is an actual total loss where the assured is irretrievably deprived of the subject-matter insured or where it is destroyed or so damaged as to lose its identity.

In the case of an actual total loss, no notice of abandonment need be given.

1105 There is a presumption of actual total loss where a ship has disappeared and no news of it has been received after a reasonable time.

1106 There is a constructive total loss where the subject-matter insured is reasonably abandoned on account of its actual total loss appearing to be unavoidable, or because it could not be preserved from actual total loss without an expenditure which would exceed its value when the expenditure had been incurred.

1107 In particular, there is a constructive total loss:

1. when the assured is deprived of the possession of the subject-matter insured by a peril insured against, and it is unlikely that he can recover it, or the cost of recovering it would exceed its value when recovered;

2. when the cost of repairing the damage to goods and forwarding them to their destination would exceed their value on arrival;

3. when the cost of repairing the damage to the ship would exceed its value when repaired.

1108 In estimating the cost of repairs of a ship, no deduction is made in respect of general average contributions to those repairs payable by other interests.

However, account is taken of the expense of future salvage operations and of any future general average contributions to which the ship would be liable if repaired.

1109 Where there is a constructive total loss, the assured may either treat the loss as a partial loss, or abandon the subject-matter insured to the insurer and treat the loss as if it were an actual total loss.

1110 Where the assured elects to abandon the subject-matter insured to the insurer, he must give notice of abandonment.

If he fails to do so, the loss can only be treated as a partial loss.

1111 There are no requirements of form or of substance for notices of abandonment.

However, the intention of the assured to abandon unconditionally his interest in the subject-matter insured must be clearly indicated.

1112 Notice of abandonment must be given with diligence after the receipt of reliable information as to the loss.

Where the information is of a doubtful character, the assured is entitled to a reasonable time to make inquiry.

1113 Notice of abandonment is not required if, when the assured receives information of the loss, there would be no possibility of benefit to the insurer if notice were given to him.

1114 Where an insurer has re-insured his risk, no notice of abandonment need be given by him.

1115 Where an abandonment is validly tendered, the insurer may accept or refuse it.

1116 Acceptance of an abandonment may be either express or implied from the conduct of the insurer.

Mere silence of the insurer does not constitute acceptance.

1117 Where the notice is accepted, the abandonment is irrevocable, the liability of the insurer is deemed admitted and the notice is deemed to have been sufficient.

1118 Where the insurer accepts the abandonment, he takes over and assumes, as from the time of the event causing the loss, the interest of the assured in whatever may remain of the subject-matter insured and all proprietary rights and all liabilities incidental to it.

1119 Upon the abandonment of a ship, the insurer who has accepted the abandonment is entitled to any freight in the course of being earned and which is earned by it subsequent to the event causing the loss, less the expenses of earning it incurred after the event.

Where the ship is carrying the owner's goods, the insurer is entitled to a reasonable remuneration for the carriage of them subsequent to the event causing the loss.

1120 Where notice of abandonment is properly given, the rights of the assured, in particular the right to recover for a constructive total loss, are not prejudiced by the fact that the insurer refuses to accept the abandonment.

1121 Where the insurer refuses the abandonment, the interest of the assured in whatever may remain of the subject-matter

insured and all proprietary rights and liabilities incidental to it remain vested with the assured, even though the insurer indemnifies the assured for the loss which gave rise to the abandonment.

§ - 11 **Partial losses and various charges**

1122 A particular average loss is a partial loss of the subject-matter insured, caused by a peril insured against, and which is not a general average loss.

1123 Particular charges are expenses incurred by or on behalf of the assured for the safety or preservation of the subject-matter insured, other than general average and salvage charges.

Particular charges are not included in particular average.

1124 Salvage charges incurred in preventing a loss by perils insured against may be recovered as a loss by those perils.

1125 "Salvage charges" are the charges recoverable under maritime law by a salvor independently of contract.

They do not include the expenses of services in the nature of salvage rendered by the assured or his agents, or any person employed for hire by them, for the purpose of averting a peril insured against.

Those expenses, where properly incurred, may be recovered as particular charges or as a general average loss, according to the circumstances in which they were incurred.

1126 A general average loss is a loss caused by or directly consequential on a general average act.

It includes a general average expenditure as well as a general average sacrifice.

1127 There is a general average act where an extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred in time of peril for the purpose of preserving the property imperilled in the common adventure.

1128 Where there is a general average loss, the party on whom it falls is entitled, subject to the conditions imposed by maritime law, to a rateable contribution from the other parties interested, and this contribution is called a general average contribution.

1129 Where the assured has incurred a general average expenditure, he may recover from the insurer but only in respect of the proportion of the loss which falls upon him.

In the case of a general average sacrifice, he may recover from the insurer in respect of the whole loss without having enforced his right of contribution from the other parties liable to contribute.

1130 Where the assured has paid, or is liable to pay, a general average contribution in respect of the subject-matter insured, he may recover for it from the insurer within the limits set by Article 1145.

1131 The insurer is not liable for any general average loss or contribution where the loss was not incurred for the purpose of avoiding, or in connection with the avoidance of a peril insured against.

1132 Where ship, freight and cargo, or any two of them, are owned by the same assured, the liability of the insurer in respect of general average losses or contributions is to be determined as if they were owned by different persons.

§ - 12 **Measure of indemnity**

1133 The measure of indemnity is the sum which the assured can recover in respect of a loss under a contract by which he is

insured, in the case of an unvalued contract to the full extent of the insurable value or, in the case of a valued contract, to the full extent of the value fixed by the contract.

1134 Where there is a loss recoverable under the contract, the insurer, or each insurer if there are more than one, is liable for such proportion of the measure of indemnity as the amount of his subscription bears to the value fixed by the contract in the case of a valued contract, or to the insurable value in the case of an unvalued contract.

1135 Where there is a total loss of the subject-matter insured, the measure of indemnity is the sum fixed by the contract in the case of a valued contract, and the insurable value of the subject-matter insured in the case of an unvalued contract.

1136 Where there is a partial loss of freight, the measure of indemnity is such proportion of the sum fixed by the contract in the case of a valued contract, or of the insurable value in the case of an unvalued contract, as the proportion of freight lost bears to the whole insured freight.

1137 Where there is a partial loss of ship, the measure of indemnity is as follows, whether the ship be sold or not in its damaged condition:

1. the reasonable cost of the repairs made, less the customary deductions; and
2. the estimated reasonable cost of the repairs to be made, less the customary deductions, but not exceeding the reasonable depreciation arising from the unrepaired damage.

However, the measure of indemnity must never exceed the sum insured in respect of any one casualty.

1138 Where part of the goods insured by a valued contract is totally lost, the measure of indemnity is such proportion of the sum fixed by the contract as the insurable value of the part lost

bears to the insurable value of the whole, ascertained as in the case of an unvalued contract.

1139 Where part of the goods insured by an unvalued policy is totally lost, the measure of indemnity is the insurable value of the part lost ascertained as in the case of total loss.

1140 Where the whole or any part of the goods insured has been delivered damaged at its destination, the measure of indemnity is such proportion of the sum fixed by the contract in the case of a valued contract, or of the insurable value in the case of an unvalued contract, as the difference between the gross sound and damaged values bears to the gross sound value.

1141 "Gross value" means the wholesale price at the place of arrival or, if there be no such price, the estimated value, with, in either case, freight, landing charges and duty paid beforehand.

However, in the case of goods customarily sold in bond, the bonded price is deemed to be the gross value.

1142 Where different species of property are insured under a single valuation, the valuation must be apportioned over the different species in proportion to their respective insurable values.

1143 The insured value of any part of a species is such proportion of the total insured value of the same as the insurable value of the part bears to the insurable value of the whole.

1144 Where a valuation has to be apportioned, and particulars of the invoice value of each separate species, quality, or description of goods cannot be ascertained, the division of the valuation may be made over the net arrived sound values of the different species, qualities, or descriptions of goods.

1145 Where the assured has paid, or is liable for any general average contribution, the measure of indemnity is the full amount of such contribution, if the subject-matter liable to contribution is insured for its full contributory value.

If the subject-matter is not insured for its full contributory value, or if only part of it is insured, the indemnity payable by the insurer must be reduced in proportion to the under-insurance.

Where there has been a particular average loss which constitutes a deduction from the contributory value, and for which the insurer is liable, that amount must be deducted from the insured value in order to ascertain what the insurer is liable to contribute.

Where the insurer is liable for salvage charges, the extent of his liability must be determined on the same principle.

1146 Where the assured has effected an insurance in express terms against any liability to a third party, the measure of indemnity is the amount paid or payable by him to the third party in respect of that liability, but not to exceed the amount of insurance.

1147 Where there has been a loss in respect of any subject-matter not expressly provided for in this chapter, the measure of indemnity is ascertained, as nearly as may be, in accordance with the provisions of this chapter, in so far as applicable to the particular case.

1148 Nothing in Articles 1133 to 1158 affects the rules relating to double insurance, or prohibits the insurer from disproving interest wholly or in part, or from showing that, at the time of the loss, the whole or any part of the subject-matter insured was not at risk under the policy.

1149 Where the subject-matter insured is warranted free from

particular average, the assured cannot recover for a loss of part, other than a loss incurred by a general average sacrifice, unless the contract evidenced by the policy is apportionable.

If the contract is so apportionable, the assured may recover for the total loss of any apportionable part.

1150 Where the subject-matter insured is warranted free from particular average, either wholly or under a certain percentage, the insurer is nevertheless liable for salvage charges, and for particular charges and other expenses properly incurred pursuant to the provisions of the suing and labouring clause in order to avert a loss insured against.

1151 Where the subject-matter insured is warranted free from particular average under a specified percentage, a general average loss cannot be added to a particular average loss to make up the specified percentage.

1152 For the purpose of ascertaining whether the specified percentage has been reached, no regard shall be had to the particular charges and the expenses of and incidental to ascertaining and proving the loss.

1153 Subject to Articles 1133 to 1158 the insurer is liable for successive losses, even though the total amount of the losses may exceed the sum insured.

1154 Where, under the same contract, a partial loss which has not been repaired or otherwise made good is followed by a total loss, the assured may only recover in respect of the total loss.

1155 Nothing in the two preceding articles affects the liability of the insurer under the suing and labouring clause.

1156 Where the contract contains a suing and labouring clause, the clause is deemed to be supplementary to the contract of insurance, and the assured may recover from the

insurer any expenses properly incurred pursuant to the clause, notwithstanding that the insurer may have paid for a total loss, or that the subject-matter may have been warranted free from particular average, either wholly or under a certain percentage.

The amount recoverable by the assured under this clause may not exceed the sum fixed in the contract in the case of a valued contract, or the insurable value in the case of an unvalued contract.

1157 General average losses, contributions and salvage charges, as well as expenses incurred for the purpose of averting or diminishing any loss not covered by the contract, are not recoverable under the suing and labouring clause.

1158 It is the duty of the assured and his agents, in all cases, to take such measures as may be reasonable for the purpose of averting or minimizing a loss.

§ - 13 **Subrogation**

1159 Where the insurer pays for a total loss either of the whole or, in the case of goods, of any apportionable part of the subject-matter insured, he becomes entitled to take over the interest of the assured in whatever may remain of the subject-matter so paid for, and he is subrogated in the rights and remedies of the assured in and in respect of that subject-matter as from the time of the event causing the loss.

1160 Subject to the preceding article, where the insurer pays for a partial loss, he acquires no title to the subject-matter insured, or to any part of it as may remain.

However, the insurer is subrogated in the rights and remedies of the assured in and in respect of the subject-matter insured as from the time of the event causing the loss, insofar as the assured has been indemnified.

§ - 14 **Double insurance**

1161 Where two or more contracts are effected by or on behalf of the assured on the same adventure and interest or any part of it, and the sums insured exceed the indemnity allowed by Articles 1133 to 1158, the assured is said to be over-insured by double insurance.

1162 The assured may claim payment from the insurers in the order he thinks fit.

However, he is not entitled to receive any sum in excess of the indemnity allowed by Articles 1133 to 1158.

1163 Where the contract under which the assured claims is a valued contract, the assured must give credit as against the valuation for any sum received by him under any other contract without regard to the actual value of the subject-matter insured.

1164 Where the contract under which the assured claims is an unvalued contract he must give credit, as against the full insurable value, for any sum received by him under any other contract.

1165 Where the assured receives a sum in excess of the indemnity allowed by Articles 1133 to 1158, he is deemed to hold that sum for the benefit of the insurers, according to their right of contribution among themselves.

1166 Where the assured is over-insured by double insurance, each insurer is bound, as between himself and the other insurers, to contribute rateably to the loss in proportion to the amount for which he is liable under his contract.

1167 If any insurer pays more than his proportion of the loss, he is entitled to maintain an action for contribution against the other insurers, and is entitled to the like remedies as a surety who has paid more than his proportion of the debt.

§ - 15 **Under insurance**

1168 Where the assured is insured for an amount less than the insurable value or, in the case of a valued contract, for an amount less than the contract valuation, he is deemed to be his own insurer in respect of the uninsured balance.

§ - 16 **Mutual insurance**

1169 There is mutual insurance when two or more persons agree to insure each other against marine losses.

1170 In the case of liability insurance, the amount of the insurance is affected exclusively to the payment of third parties injured.

Third parties injured may sue the insured or the insurer directly.

1171 The provisions relating to marine insurance, except those concerning the premium, apply to mutual insurance.

A guarantee or any other arrangement as may be agreed upon may be substituted for the premium.

CHAPTER XVI

ANNUITIES

Section I

General provisions

1172 An annuity is created by a contract under which the debtor undertakes to pay periodic instalments to the creditor for a certain time.

1173 An annuity may also be created by will or by law.

1174 An annuity may be for life or for a term.

1175 An annuity may not be stipulated to be exempt from seizure and untransferable, unless the creditor receives it by gratuitous title.

1176 The capital value of an annuity may not be claimed solely on the grounds of non-payment of arrears.

1177 The creditor whose annuity is secured by hypothec may not demand that the immoveable seized be sold subject to his annuity.

1178 A hypothec which secures payment of an annuity is purged by a forced sale.

At collocation, any subsequent creditor is entitled to the proceeds of the sale, provided he furnishes sufficient security for the continued payment of the annuity.

Failure to provide this security entitles the creditor, according to his rank, to receive the capital value of the annuity on the day of collocation.

1179 The capital value of an annuity may be demanded if the debtor does not furnish or maintain the security promised, or if he becomes insolvent or is declared bankrupt.

1180 An annuity is estimated at an amount sufficient to acquire from an authorized insurer an annuity of the same value.

This provision is imperative.

1181 In the absence of agreement, the value of the annuity is determined by the court upon motion.

1182 The debtor may appoint an authorized insurer in his

place provided he pays him the price of an annuity of the same value.

The same applies to the owner of an immoveable affected by an annuity.

These provisions are imperative.

1183 If the creditor does not agree, the debtor may apply to the court by motion.

If the judgment authorizes the substitution, it discharges the debtor who has paid the required price, obliges the insurer towards the creditor, and entails extinction of any hypothec securing payment of the annuity.

1184 The creditor may be other than a party to the contract or the annuitant.

1185 Designations and revocations of creditors are subject to the rules governing stipulations in favour of another.

1186 However, designations and revocations of creditors under annuities issued by insurers or under retirement pension plans are governed, *mutatis mutandis*, by Articles 2500 and 2540 to 2560.

Section II

Special provisions governing life annuities

1187 A life annuity is one whose duration is limited to the lifetime of a person called the annuitant.

Its duration may also be limited to the lifetime of several annuitants.

1188 A life annuity in favour of a person who was dead or did not yet exist on the day it was created is null.

1189 A life annuity in favour of several persons successively has effect only if the first of these persons was in existence on the day the annuity was created.

It terminates, however, as soon as none of the persons contemplated are living, and not later than ninety-nine years after it is created.

1190 When payment of an annuity is to continue after the death of the last annuitant, the duration of the annuity may not for this reason exceed ninety-nine years.

1191 A loan as to capital is presumed an annuity on the life of the lender.

1192 A life annuity payable to consorts is presumed revertible in favour of the surviving consort.

1193 Arrears, unless they are stipulated to be payable in advance, accrue to the creditor in proportion to the number of days that the annuitant has lived.

1194 Subject to Article 1190, a creditor may demand arrears only if he proves that the annuitant is living.

Section III

Special provisions governing term annuities

1195 A term annuity is one whose duration does not depend on the existence of one or more persons.

1196 The duration of a term annuity is in all cases limited or reduced to ninety-nine years.

This provision is imperative.

CHAPTER XVII

GAMING AND WAGERING CONTRACTS

1197 Gaming and wagering contracts are valid only in cases expressly authorized by law.

1198 In other cases, the winner may not claim payment of the debt and the loser may not obtain restitution of what he has paid.

However, the court may allow restitution of part of the amount paid, if it appears excessive.

CHAPTER XVIII

SETTLEMENTS

1199 A settlement is a contract by which the parties prevent or terminate a dispute, or terminate a lawsuit, by means of concessions or reservations made by one or more of them.

1200 Error of law is not a cause of nullity of a settlement.

1201 A settlement based on a title that is null is also null, unless the parties have made specific reference to the nullity.

1202 A settlement based on a writing later found to be false is null.

1203 A settlement upon a lawsuit may be annulled upon application by a party who was unaware that the litigation had been terminated by a judgment, whether or not that judgment was final.

1204 When the parties have made a settlement upon all the matters between them, the subsequent discovery of any document is not a cause of nullity of the settlement, unless one

of the parties or, with his knowledge, a third party has withheld the document.

The settlement may be annulled, however, when it relates to only one object and when the document later discovered proves that one of the parties had no right to it.

1205 Errors resulting from inadvertance, particularly errors of calculation or clerical errors, may be corrected by a declaratory judgment.

CHAPTER XIX

ARBITRATION

Section I

General provisions

1206 Arbitration is a contract by which the parties undertake to submit an existing or an eventual dispute to the decision of one or several arbitrators, to the exclusion of the courts.

1207 However, disputes concerning separations between consorts, custody of children, the status and capacity of persons, or anything affecting public order may not be submitted to arbitration.

1208 Arbitration must be evidenced in writing.

1209 A stipulation which confers a privileged position on one party with respect to the appointment of the arbitrators is without effect.

1210 The court must dismiss any action brought before it if the dispute is the object of an arbitration agreement.

Section II

Arbitration procedure

§ - 1 Appointment of arbitrators

1211 A party who intends to take a dispute before the arbitration tribunal must notify the opposing party and specify the object of the dispute.

If the agreement makes no provision for it, the notice names the arbitrator chosen by the party, or determines a reasonable period of time for the appointment of a sole arbitrator.

1212 Notice may be served by registered or certified mail.

1213 Service of the notice interrupts prescription.

1214 The constitution of the arbitration tribunal results from the arbitration agreement or from a subsequent agreement.

If the parties cannot agree, each appoints one arbitrator.

If an even number of arbitrators is so appointed, they appoint another person who acts as president.

1215 When the parties or the arbitrators fail to make the appointment, it is made by the court, upon motion by one of the parties.

1216 The "judge" or the "court" is the judge or court competent to decide as to the object of the dispute entrusted to the arbitration tribunal.

1217 A person who appointed an arbitrator who is prevented from fulfilling his duties may replace him.

1218 An arbitrator may not be dismissed except with the consent of the parties.

1219 An arbitrator may not relinquish his duties without serious reason, once arbitration has begun.

1220 An arbitrator may be recused only for a ground of recusation applicable to a judge.

The recusation is applied for by motion.

1221 The arbitration tribunal may order each party to furnish, within a fixed period, a written statement of his claims and the documents which he invokes.

It must hear the parties and receive their evidence, or, if they offer none, record their default.

It determines the procedure unless the parties have otherwise determined it.

1222 Witnesses are summoned in accordance with Articles 280 to 283 of the Code of Civil Procedure.

An arbitrator may swear witnesses.

When a witness fails to appear, a party or the arbitrator may request the judge to compel him to do so under Article 284 of the Code of Civil Procedure.

1223 The articles of the Code of Civil Procedure respecting continuance of suit apply to arbitration, unless they are incompatible.

1224 The arbitrators are not obliged to decide according to the rules of law, unless there is a stipulation to the contrary.

§ - 2 **Arbitration award**

1225 The arbitration tribunal may make provisional or interlocutory awards.

1226 The arbitrators must render an award.

The award is made by a majority vote.

It must contain the reasons for the decision and be signed by the arbitrators who endorse it.

If any arbitrator refuses to sign the award or is incapable of doing so, the others must record this.

1227 The arbitration award must be made within the period of time fixed or extended by the parties, unless the court, upon motion by one of the parties or by the arbitrators, has extended the period of time.

The work of the arbitrators ends if the award is not made within the period provided for, without prejudice to any recourse in damages against them.

1228 In the case of the preceding article, the parties must submit the dispute to a new arbitration tribunal.

The same applies to cases of annulment of an arbitration award.

1229 The periods for prescription of judgments apply to arbitration awards.

1230 The arbitration tribunal sends each party a copy of the arbitration award by registered or certified mail.

1231 The parties are bound by the arbitration award.

1232 The parties must execute the arbitration award within fifteen days after it is received.

1233 Once the period of time has elapsed, any interested party may apply to the court, by motion, for homologation of the award.

Section III

Motion for homologation or for annulment

1234 A party may apply for annulment of the award only by motion or in opposition to a motion for homologation, and only if:

1. the arbitration agreement is not valid;
2. the arbitration tribunal has been irregularly constituted;
3. the parties were unable to assert their rights and means;
4. the arbitration tribunal has exceeded its jurisdiction or its powers;
5. the arbitration award does not contain the reasons for the decision or it contains contradictory dispositions;
6. the arbitration award is contrary to public order;
7. there has been fraud;
8. the arbitration award is based on evidence acknowledged to be false by all the parties or declared false by a judgment possessing force of *res judicata*;
9. there has been an error of law when the arbitrators were required to decide according to the rules of law.

1235 if one disposition of the arbitration award constitutes the sole ground for annulment, it alone is annulled if it can be severed from the rest of the award.

1236 The court seized of a motion for homologation or annulment may not examine the substance of the dispute.

1237 The court may also, even *proprio motu*, permit the arbitration tribunal to amend or complete its decision when:

1. new evidence that could modify the decision is discovered after the arbitration award, and that evidence could not have been discovered in time;
2. the arbitration award contains errors resulting from inadvertance, particularly errors in writing or in calculation;
3. the arbitration award grants more than was requested;
4. the award fails to adjudicate on part of the application.

1238 No appeal lies from any judgment for homologation or annulment of an arbitration award.

1239 Once homologated, the arbitration award is executory in accordance with the provisions of the Code of Civil Procedure governing compulsory execution of judgments.

BOOK SIX

EVIDENCE

CHAPTER I

GENERAL PROVISIONS

1 Every person who asserts a right must prove the facts giving rise to it.

On the other hand, the party setting up the nullity, modification or extinction of the right must prove the facts upon which he relies.

2 No person need prove his good faith unless expressly required by law.

3 Evidence is sufficient if it renders the existence of a fact more probable than its non-existence.

4 Proof may be made of any fact relevant to the issues.

5 The court, however, may reject any evidence obtained illegally if the gravity of the offence so warrants.

6 The court may also declare inadmissible the proof of any relevant fact of doubtful importance, if the proof is likely to confuse the issues or cause serious prejudice to the opposite party.

7 No proof is required of a fact which the court must notice judicially.

8 In particular, judicial notice must be taken of the law in force in Québec and of any fact so notorious as not to give rise to reasonable dispute.

9 Judicial notice must also be taken of the law of the other provinces or territories of Canada provided it has been pleaded.

The court may, however, require that proof be made of such law.

10 The court need not take judicial notice of the law of a foreign State.

It may do so if such law has been pleaded.

11 Where the applicable law has not been pleaded or its content cannot be determined in accordance with the two preceding articles, the court applies the internal law in force in Québec.

CHAPTER II

HOW PROOF IS MADE

12 Proof may be made by writings, by testimony, by presumptions or by admissions, according to the rules set down in this chapter, and in the manner provided in the Code of Civil Procedure.

Section I

Proof by writings

§ - 1 Copies of statutes

13 Copies of statutes which have been or are in force in Canada, attested to by a competent public officer or printed by a duly authorized printer, make proof of the existence and content of such statutes; neither the signature or the seal appended thereto, nor the quality of the officer or printer, need be proven.

§ - 2 Authentic writings

14 An authentic writing is one received before or attested to

by a competent public officer, under the laws of Québec or of Canada, with the formalities required by law.

15 The following documents, in particular, are authentic provided they fulfil the requirements of the preceding article:

1. official documents issued by the government of Canada or of Québec, such as letters patent, orders in council, commissions and proclamations;
2. records and official documents of the Parliament of Canada and of the Legislature of Québec;
3. records of the courts of justice which have jurisdiction in Québec;
4. records of municipal, school and parish corporations in Québec;
5. records of a public nature which the law requires be kept by public officers;
6. notarial instruments;
7. official copies of and extracts from the foregoing documents.

16 A writing which appears to comply with Article 14 is presumed authentic.

17 In an authentic writing, the assertion of a fact which it was the public officer's duty to note makes proof against all persons.

18 An act of civil status makes proof against all persons of the facts it mentions.

19 A notarial instrument makes proof against all persons of the juridical act which it sets forth and of the declarations of the parties directly related to the act.

20 An authentic copy of a document makes proof against all persons that it complies with the original, which it replaces.

21 The following are authentic:

1. a copy of the original of an authentic writing, attested to by the public officer who is its legal depositary;

2. if the original of an authentic writing is lost, a copy of an authentic copy of such writing, attested to by the public officer who by judicial order is its legal depositary;

3. a copy of a registered document, even a writing under private signature, attested to by the Registrar, when the original is lost or in the possession of the opposite party or a third party, without collusion on the part of the person who invokes it.

22 A duly certified extract which textually reproduces part of an authentic writing is authentic, provided it indicates the date of the original, the place where the original was drawn up, its nature, the names of the parties if need be, and the name of the public officer who drew up the writing.

23 Only those assertions of fact which the public officer had the duty to note need be contested by improbation.

In particular, improbation is not required to contest the quality or the signature of the public officer, or the competence of the witnesses.

§ - 3 **Semi-authentic writings**

24 A writing ostensibly issued by a competent foreign public officer makes proof of its content against all persons; neither the quality nor the signature of the officer need be proven.

25 A copy, ostensibly issued by a competent foreign public officer, of a document of which he is the depositary, also makes proof against all persons that it conforms to the original, which it replaces.

26 A power of attorney made under private signature

outside Québec, in the presence of one witness, makes proof against all persons if accompanied by a solemn or sworn declaration signed by the witness to the effect that he knows the signatory and saw him sign.

27 The documents mentioned in the three preceding articles may be filed with a notary to enable him to issue copies.

The copies make proof that they conform to the document filed, which they replace.

28 If the documents mentioned in Articles 24, 25 and 26 have been regularly denied in accordance with the Code of Civil Procedure, the person who invokes them must prove them.

§ - 4 **Private writings**

29 A private writing is one setting forth a juridical act; it is signed by the parties to the act and is not governed by any formalities.

30 Signature is the affixing by a person of his name or of any mark by which he shows his consent.

31 The signature of one person may, with his authority, be affixed by another.

32 A private writing must be proven by the party invoking it.

However, a writing set up against a person who appears to have signed it, or against his heirs, is presumed admitted unless it has been denied in accordance with the Code of Civil Procedure.

33 A private writing makes proof, with respect to those against whom it is proven, of the juridical act which it sets

forth, and of the declarations of the parties directly related to the act.

34 A private writing does not make proof of its date against third parties, but the date may be established against them by any means.

However, writings which relate to acts repeated in the course of a regular activity are presumed to have been made on the date they bear.

§ - 5 Unsigned writings, private registers and papers

35 An unsigned writing which is not the draft of an instrument makes proof against its author.

36 Except in the cases provided for in Articles 42, 43 and 44, private registers and papers make no proof in favour of the person who drew them up; they make proof against him.

37 A release, even unsigned and undated, made by a creditor on the title of his debt makes proof against him.

38 Anyone who invokes a writing mentioned in Articles 35, 36 and 37 must prove that it originates from the person against whom it is set up.

39 The writings mentioned in Articles 35, 36 and 37 may be contested by any means.

Section II

Testimony

40 Testimony is a statement by which a person asserts facts of which he has personal knowledge.

A statement by which an expert gives his opinion is also testimony.

41 To make proof, testimony must be given by deposition in the course of the action in accordance with the Code of Civil Procedure, unless the parties otherwise agree or the law makes special provision to the contrary.

42 A statement made by a person who does not appear as a witness, concerning facts to which that person could legally have testified, may by leave of the court be proven and offered in evidence, provided:

1. application has been made in accordance with the Code of Civil Procedure after notice to the opposite party;

2. the circumstances surrounding the statement provide sound reason to judge it reliable;

3. it is impossible, in all the circumstances of the case, for such person to appear as a witness.

43 Nevertheless, where a statement was made in the course of a regular activity and recorded in a register kept especially for that purpose, it need not be shown that the person who made it cannot appear as a witness, provided the circumstances give reason to presume that the register faithfully reproduces the statement.

44 Previous statements by a person who appears as a witness, regarding facts to which he can legally testify, are admissible as testimony, provided there is sound reason to judge them reliable in the light of the circumstances under which they are made.

However, subject to the following article, no statement given in another proceeding is admissible without the consent of the opposite party.

45 When a party is allowed to prove that a witness made a previous statement inconsistent with his present testimony, that statement is also testimony.

46 A statement made in a writing must be proven by filing the writing.

No other statement may be proven, except by the testimony of the person who made it or of those who had personal knowledge of it, saving the exceptions contained in the two following articles.

47 A statement recorded on magnetic tape or by other appropriate technical means may be proven by such means, provided the reliability of the recording be separately proven.

48 A statement reduced to writing by someone other than the declarant may be proven by filing the writing in the following cases:

1. when the declarant has acknowledged that the writing reproduces his statement faithfully;

2. when the writing has been drawn up either at the request of the declarant or by a person acting in the performance of his duties, and the circumstances give reason to presume that the writing faithfully reproduces the statement.

49 A person who makes a statement which is admissible under Article 42 may be impeached in the same way as a witness.

50 The probative value of testimony is left to the discretion of the court.

Section III

Presumptions

51 A presumption is an inference which the law or the court makes from a known fact to one which is unknown.

52 A legal presumption is one specifically attached by law to certain facts.

It exempts the person in whose favour it exists from making other proof; some presumptions are simple and may be rebutted by proof to the contrary, while others are absolute and irrebuttable.

53 In this Code, the expression "is deemed" implies an absolute presumption; the expression "is presumed" implies a simple presumption.

54 Unless the law has reserved the right to make proof to the contrary, no proof is admitted to rebut a legal presumption by which the law annuls certain acts or disallows a suit.

However, a judicial admission may be admitted to rebut a legal presumption which is not of public order.

55 The authority of a final judgment is an absolute presumption.

It applies only to what was the object of the judgment, when the demand is founded on the same cause and is between the same parties acting in the same capacities, and the thing applied for is the same.

56 Presumptions not established by law are left to the discretion of the court.

Section IV

Admissions

57 An admission is the recognition of a fact which may produce legal consequences against the person who makes it.

58 An admission may be express or implied.

59 No admission may be inferred from mere silence, except in the cases provided by law.

60 A judicial admission is one made in the course of the action in which it is invoked; any other admission is extrajudicial.

61 An admission made by a mandatary in the course of his mandate and within the limits of his powers or relating to his management may be set up against the mandator.

After the mandate expires, the mandatary may be called upon to testify to any facts he became aware of in that quality; his testimony may then be treated as an admission or a commencement of proof against the mandator.

62 No admission may be divided against the person who makes it.

It may, however, be divided:

1. when it contains facts foreign to the issues;
2. when that part of the admission objected to is improbable, or is invalidated by indications of bad faith or by evidence to the contrary;
3. when the facts contained in the admission have no connection with each other.

63 An extrajudicial admission is proven by any means admissible to prove the fact which is its object.

64 A judicial admission by the opposite party or by his mandatary authorized for that purpose makes complete proof against him.

It may not be revoked, unless proven to have been based on an error of fact.

The probative value of any other admission, even judicial, is left to the discr

CHAPTER III

ADMISSIBILITY OF MEANS OF PROOF

65 All means of proof are admissible, subject to express provision of law.

66 Between the parties to it, no juridical act whose object has a value of more than four hundred dollars may be proven by testimony.

67 Article 66 does not apply:

1. when proof is to be made against a person of a juridical act entered into by him in the course or for the purpose of a commercial or other enterprise;
2. when it has been physically or morally impossible to obtain proof in writing;
3. when the claimant establishes that, in good faith the proof of which lies upon him, he cannot produce the written proof;
4. when there is a commencement of proof which makes the alleged juridical act appear probable.

68 Commencement of proof may arise from a writing originating from the opposite party, or from his testimony.

It may also arise from any fact which has been clearly established.

69 Between the parties, unless there is a commencement of proof, no testimony is admissible to contradict or vary the terms of a writing evidencing a juridical act.

70 Proof by testimony is admissible, however, to interpret the writing or to impugn the validity of the juridical act evidenced by it.

71 The original, or a copy which legally replaces it, must be filed to prove:

1. any juridical act evidenced by a writing;
2. the content of a writing.

72 Nevertheless, when a party establishes that, in good faith the proof of which lies upon him, he cannot produce the original of the writing or any copy which replaces it, he may make proof by any means.

73 The court may not *proprio motu* invoke the rules provided in this chapter when a party who is present or duly represented has failed to do so.

BOOK SEVEN

PRESCRIPTION

TITLE ONE

PRESCRIPTION IN GENERAL

CHAPTER I

GENERAL PROVISIONS

1 Prescription is a means of acquiring or of being released by the passage of time and according to the conditions established by law.

There are two kinds of prescription: acquisitive prescription and extinctive prescription.

2 The court may not *proprio motu* invoke the rules relating to prescription except in the case of extinctive prescription of personal rights.

3 Prescription is accomplished when the last day of the term has expired; the day on which it begins is not counted, if it is not a full day.

4 A ground conducive to defeating a principal action may always be invoked, even when the time for making use of it by direct action has expired, provided it could have constituted a valid defence to the action when it could still support a direct action.

Maintenance of the ground so set up in defence does not revive the prescribed direct action.

CHAPTER II

RENUNCIATION OF PRESCRIPTION

5 Prescription may not be renounced in advance.

Prescription which has been acquired may be renounced; the same applies to the benefit of the time elapsed by which prescription is begun.

6 No prescriptive period other than that provided by law may be agreed upon.

7 Renunciation of prescription is either express or tacit.

Tacit renunciation results from an act which implies abandonment of the right acquired.

8 A person who cannot alienate may not renounce any prescription acquired.

9 Any person who has an interest in the acquisition of prescription may set it up, even if the debtor or the possessor renounces it.

CHAPTER III

SUSPENSION OF PRESCRIPTION

10 Prescription has effect in favour of or against all persons, including the Crown, subject to express provision of law.

11 Prescription does not run against persons if it is impossible in fact for them to act by themselves or to be represented by others.

12 Prescription does not run against children yet unborn, minors or persons of major age under tutorship with respect to claims they have against their legal representatives.

13. Prescription does not run against a beneficiary heir with respect to claims he has against the succession.

14 Suspension of prescription of solidary and of indivisible debts is subject to the rules governing interruption of prescription of those debts.

CHAPTER IV

INTERRUPTION OF PRESCRIPTION

15 Prescription may be interrupted naturally or civilly.

16 Acquisitive prescription is interrupted naturally when the possessor is deprived of the enjoyment of a thing, for more than one year, by the owner or by a third party.

17 Extinctive prescription is interrupted naturally when a person vested with a dismemberment of ownership, having failed to avail himself of it, performs an act in the exercise of that right.

18 Civil interruption may be judicial or extrajudicial.

19 Deposit of a judicial demand, before expiry of the period of prescription, in the office of the court constitutes a civil interruption, provided the demand is served, in accordance with the Code of Civil Procedure, on the person to be prevented from prescribing, not later than sixty days following expiry of the period for prescription.

20 Any application to allow a creditor to participate in a distribution of money provided for by law also interrupts prescription.

21 Interruption is deemed never to have occurred if the proceedings are dismissed, withdrawn, perempted, or discontinued for a period of fifteen years.

However, when the proceedings are dismissed without a decision having been made as to the substance of the matter, and on the day of the judgment, the period for prescription has expired or will expire in less than six months, the holder of the right has six months from the judgment, in which to claim his right.

The same applies in matters of arbitration; the six-month period then runs from the time the award is made, the end of arbitration, or the judgment annulling the award.

22 Interruption which results from a judicial demand continues until final judgment or, as the case may be, until the settlement between the parties.

The interruption has effect with regard to all parties for any right which arises from the same source.

23 A judicial demand against a principal debtor or against a surety interrupts prescription as regards both.

No other act of interruption by a principal debtor or by a surety affects the other unless he consents to it.

24 Acknowledgement of a right interrupts prescription.

The same applies to renunciation of the benefit of a period which has elapsed.

25 Interruption with regard to one of the creditors or debtors of a solidary or indivisible obligation has effect with regard to the others.

26 Interruption with regard to one of the joint creditors or debtors of a divisible obligation has no effect with regard to the others.

27 Interruption with regard to one of the coheirs of a solidary creditor or debtor of a divisible obligation has effect

with regard to the other solidary creditors or debtors only as regards that heir's portion.

28 Following renunciation or interruption, prescription begins to run again for the same period, except as regards the ten-year acquisitive prescription which is then complete only after twenty-five years.

29 A judgment constitutes a title which is prescribed by twenty-five years, even when the right so sanctioned is prescribed by a different period.

TITLE TWO

ACQUISITIVE PRESCRIPTION

CHAPTER I

GENERAL PROVISIONS

30 Acquisitive prescription is a means of acquiring ownership or its dismemberments through the effect of possession.

31 Things which are not objects of trade cannot be prescribed.

32 Acquisitive prescription of servitudes is possible only with respect to immoveable property the ownership of which may be acquired in this manner.

CHAPTER II

CONDITIONS REQUIRED FOR ACQUISITIVE PRESCRIPTION

33 Acquisitive prescription requires possession in accordance with the conditions laid down in the Book on *Property*.

34 A successor by particular title may join his possession to that of his predecessors in order to complete prescription.

A universal successor or a successor by general title continues the possession of his predecessor.

35 Detention may not be the basis for prescription, even if it extends beyond the term agreed upon.

The universal successor or the successor by general title of a holder may not prescribe.

36 A precarious title may be interverted either by a new non-precarious title provided by the owner or by a third party, or by an act performed by the holder which is incompatible with precarious holding.

Interversion renders the possession available for prescription only from the time when the owner has knowledge of the new title or of the act of the holder.

37 Third parties may prescribe against the owner during dismemberment or precarious holding.

38 A person who has been put in possession may not begin to prescribe until the absentee returns or his death becomes known, is legally presumed or judicially declared.

39 The institute and his universal successors or successors by general title may not prescribe against the substitute before the substitution opens.

Before the right opens, prescription runs against the substitute in favour of third parties.

The substitute, against whom that prescription runs, may avail himself of an action in interruption.

Possession by the institute benefits the substitute for prescription.

Prescription runs against the institute during his possession and in his favour against third parties.

When a substitution opens, there is interversion of title in favour of the institute and of his universal successors or his successors by general title, who may begin to prescribe from that time.

CHAPTER III

PERIODS FOR ACQUISITIVE PRESCRIPTION

40 The period for acquisitive prescription is twenty-five years, except as otherwise fixed by law.

41 In matters of immoveable property, the period for prescription is ten years, provided the possessor has acquired in good faith and by translatory title.

42 A subsequent acquirer need merely have been in good faith at the time of the acquisition, even when his effective possession began later.

The same applies when there is joinder of possession with respect to each previous acquirer.

43 A title which is absolutely null may not serve as a basis for the ten-year prescription.

44 When the ten-year prescription can run, every new acquirer of an immoveable affected by a servitude, charge or hypothec may be compelled to furnish a new title at his own expense.

45 The possessor in good faith of moveable property acquires the ownership of it by three years running from the loss of possession.

As long as this period has not expired, the owner may revendicate the moveable property, unless it has been acquired under the authority of justice.

The owner who has revendicated the moveable property need not reimburse the price paid by the possessor.

TITLE THREE

EXTINCTIVE PRESCRIPTION

46 Extinctive prescription is a means of extinguishing a right which has not been exercised for a period of time fixed by law.

47 An action respecting the status of a person may not be prescribed, subject to express provision of law.

48 Principal real rights, save the right of ownership, are prescribed by ten years.

49 Personal rights are prescribed by three years.

50 The period for prescription runs from the day when the right of action arises.

51 When the damage appears progressively, the period runs from the day when the damage appears for the first time.

However, the right of action lapses after ten years following the act which caused the damage.

52 Prescription is not hindered by a continuation of services, work, sales or supplies, provided there has been no acknowledgment or other cause of interruption.

53 In an action in nullity of contract, the period runs, in the case of fraud or error, from the day it is discovered and, in the case of violence or fear, from the day it ceases.

However, the right of action lapses after ten years following the conclusion of the contract.

54 A holder may not free himself from the prestation attached to his detention; the amount may be prescribed, however, as may the arrears.

BOOK EIGHT

PUBLICATION OF RIGHTS

CHAPTER I

PRELIMINARY PROVISIONS

1 Publication of rights allows them to be set up against third parties, determines their rank and, when required by law, gives effect to them.

2 Notice given or knowledge acquired of an unpublished right can never compensate for failure to publish, and cannot prejudice the rights of third parties.

3 A published right is deemed to be known by any person who acquires or publishes a right on the same property.

4 Failure to publish may be set up by any interested person against any other person, even one placed under a regime of protection, and against the Crown.

5 Any restriction on the right to publish a right subject to the formality of publication, and any penal clause related to it, are without effect.

CHAPTER II

SCOPE OF PUBLICATION

6 The acquisition, constitution, extinction and transfer of any immoveable right, and any modality concerning them, are subject to the formality of publication.

Those which relate to moveable rights are subject to publication only to the extent permitted or required by law.

7 Minutes determining boundaries and, where applicable, judgments homologating those minutes are subject to the formality of publication.

8 The right of municipal and school corporations to have immoveable property sold for taxes is not subject to the formality of publication by registration, saving the provisions governing the exercise of that right.

9 Immoveable rights acquired by prescription are subject to the formality of publication.

They are published by registering the judgment which recognizes them.

10 A judgment pronouncing the nullity, resolution, revocation, resiliation or extinction of a published immoveable right is subject to the formality of publication.

11 A substitution is subject to the formality of publication.

It has no effect with respect to property acquired by replacement of substituted property, unless mention is made of this in the act of acquisition, and unless the act is published.

Publication of a substitution in no way affects the rights of any third parties who have published the rights they hold from the institute by virtue of an act by onerous title.

12 A servitude constituted by destination of the owner before this Code comes into force is not subject to the formality of publication.

13 Acceptance of a succession under benefit of inventory has no effect unless it is published.

Renunciation of a succession, a legacy, a community of property or a partnership of acquests is subject to the formality of publication.

The publications mentioned in the preceding paragraphs must be made in the central register of personal and moveable rights, even where they are also to be published in

the office of the registration division where the immoveable property concerned is situated.

14 A declaration of family residence is without effect, either between the consorts or with respect to third parties, unless it is published.

15 Deposit of a plan in the registry office, under the law which requires it, is equivalent to publication of the plan, provided this is mentioned on the index of immoveables concerned.

The preceding paragraph does not apply to the deposit of plans contemplated in Articles 65, 72, 73, 74, 75 and 77, in the *Registration Act* and in the *Cadastre Act*.

In all cases, however, including where minutes determining boundaries are homologated by the court, deposit of a plan has no effect unless the plan bears the certificate of the Minister of Lands and Forests.

CHAPTER III

PRENOTATION

16 Prenotation is the advance publication either of an immoveable right, even before it arises or is acquired, or of the extinction of an immoveable right before it is extinguished, or the publication either of a judicial action respecting immoveable property, or of a hypothecary action, in the manner provided for by law.

17 Prenotation may be used, in particular, with respect to:

1. a suit concerning an immoveable right;
2. a moveable or immoveable hypothecary action;
3. the acquisition, constitution, extinction or transfer of any immoveable right;

4. a modification of an immoveable right or of its rank;

5. an immoveable right resulting from a succession, in accordance with the following article.

18 An interested person who, without negligence or participation, is unable to publish a right resulting from a succession, including a testamentary hypothec, by reason of concealment, suppression, contestation of a will or any other obstacle, may request the court, by motion, to authorize prenotation of the right.

19 Prenotation may be effected only by deposit either of an act to which the holder of the right concerned by the prenotation has consented or of a court order, obtained on motion, authorizing prenotation.

However, prenotation of a hypothecary action is effected upon deposit of a notice of the action, without previous consent or authorization.

20 The court may authorize prenotation when the person applying for it seems to be entitled to it and when the court deems it necessary to ensure publicity of the right or of the action, even before judgment is rendered on the merits or before any act has been passed between the parties concerned.

However, the plaintiff need not prove that the right to publish would be imperilled without prenotation.

21 An immoveable right or the extinction of an immoveable right, which was the object of a prenotation, is deemed published from the time of the prenotation, provided the right or the extinction is published within three months following the prenotation.

If publication is not effected within three months, the prenotation has no effect and the Registrar cancels it *proprio motu*.

22 The following definitive judgments are also deemed published from prenotation:

1. in cases of suits, if the judgment is published within three months after it was rendered;

2. in the case contemplated in Article 18, if the judgment is published within three months following the definitive judgment or following removal of the obstacle and, at the latest, within three years after the succession opened, except, with respect to this last period, in cases where a will is judicially contested.

23 An act or judgment allowing prenotation may provide for a period shorter than that specified in Articles 21 and 22.

24 There cannot be prenotation in matters of successions which have not opened.

25 Prenotation of a hypothec must indicate the amount of it.

CHAPTER IV

MODALITIES OF PUBLICATION

Section I

Preliminary conditions for publication

26 To be acceptable for publication, deeds and memorials of deeds of acquisition, constitution, extinction and transmission of an immoveable right, except wills, discharges and deeds of hypothec mentioned in the second paragraph of Article 314 of the Book on *Property*, must be made in authentic form.

All other documents and, in particular, leases, proxies,

minutes of meetings of legal persons and notices are not subject to the foregoing paragraph.

27 The notary who receives an act respecting a publishable right must certify that he has, with prudence and diligence, verified the identity, quality and capacity of the parties, as well as the validity of the act.

The same applies to the land-surveyor with respect to the deeds that he prepares.

28 A document presented for publication, unless it is in authentic form, must be accompanied by a declaration signed by a notary or a lawyer and certifying that he has, with prudence and diligence, verified the identity, quality and capacity of the parties, as well as the validity of the document.

Section II

Mechanism of publication

§ - 1 General provisions

29 Publication of rights is effected by registration, except as otherwise expressly provided by law.

30 Any person, even if he is under a protective regime, may demand publication for himself or for another.

31 Rights respecting an immoveable or an immoveable right are published at the office of the registration division where the immoveable is located.

32 Any other publication by registration is effected at the central register of personal and moveable rights.

33 Registration is made by the deposit of the document *in extenso*, or of an extract if it is authentic, or of a memorial made of it.

§ - 2 Registration by deposit of documents *in extenso* or of extracts

34 When the law requires notarial form, instruments so drawn up, and minutes determining boundaries, are registered by depositing them *in extenso* or by depositing an authentic extract from them.

An act of renunciation of rights is also registered by depositing it *in extenso* or by depositing an extract from it.

§ - 3 Registration by deposit of a memorial

35 All other documents may be registered by depositing a memorial.

36 Where the law requires that registration be made by depositing the document *in extenso*, the court, on motion under Book Six of the Code of Civil Procedure, may allow registration by deposit of a memorial, if it decides that this is in the best interest of the parties, and especially where rights have lapsed or are extinguished.

37 A memorial is a summary of the document to be published.

It mentions:

1. the date and the place where it is made;
2. the date of the document it summarizes and the place where that document was made;
3. the name of the notary who received it, if it is in notarial form;
4. the names of the witnesses who have attested to it, if it is by private writing;
5. the name of the court which rendered it, where applicable;

6. the name of the land-surveyor, where applicable;
7. the nature of the document which the memorial summarizes;
8. a designation of the creditors, debtors or other parties mentioned in the document summarized, and of the person by whom the memorial is signed;
9. a designation of the property affected by the right published;
10. the nature of the rights to be published and, if they relate to a debt in money, the amount due, the rate of interest, and costs, if any.

If the rate of interest is not specified, registration by deposit of a memorial reserves no right to interest beyond the legal rate.

38 A memorial may be prepared by any interested person.

It is made before a notary by an instrument *en minute* or *en brevet* or, subject to Article 26, by a private writing before two witnesses.

A memorial which is not prepared before a notary may not contain the lot number given on the plan and in the book of reference, unless the number is given in the document.

39 One memorial suffices whenever a right to be published is attested to in several writings, without it being necessary to designate the parties or the property more than once.

40 The same applies where one person has several obligations, titles or rights upon one or more properties in favour of the same creditor or acquirer, and in the case of several successive titles transferring the same property.

§ - 4 **Registration procedure**

41 Only one original or one copy of the document to be registered is submitted.

If the document is an authentic act other than a notarial instrument *en brevet*, one copy of it, or one authentic extract from it, is submitted.

If it is a notarial instrument *en brevet* or a document under private writing, an original is submitted.

42 A document under private writing must bear the signature of the persons who made it or those of the parties to it, and must be attested to by two witnesses under their signatures.

43 A memorial is submitted for registration along with, where applicable, an authentic copy or an original of the document which it summarizes.

44 A document submitted for registration must be accompanied by a schedule in the form and according to the rules prescribed by the *Registration Act*, and by the other documents required under that Act.

45 The schedule is signed by the person who requires the registration, and contains the following information:

1. the name, address and identification number of each party whose rights are so published or whose rights are concerned;
2. a description or designation of the property concerned;
3. the nature of the right concerned and, where applicable, an indication of whether it is a general or a floating hypothec;
4. the amount, if any, of the obligation or of the hypothec;
5. the term for which the right is created or renewed, if any;
6. the date of the document;
7. the name of the notary or of the land-surveyor and the

minute number, where applicable, if the instrument is in authentic form;

8. the name of the court which rendered it and the file number, where a judgment is concerned;

9. the registration number of any act affected by the publication or the renewal, as the case may be.

46 The rights of an heir to the immoveable property of a succession are published by registering a declaration and, where applicable, the will.

47 The declaration contemplated in the preceding article contains the following information:

1. the name of the deceased;

2. the date of death;

3. the name of each heir;

4. the quality of legatee or consort, as well as the degree of relationship of each heir with the deceased;

5. the designation of the immoveable;

6. the rights of each heir on the immoveable.

48 Errors of omission or commission in documents submitted for registration do not affect the validity of the registration unless they bear on an essential provision which must be set forth in the schedule, in a memorial or in a certificate of the Registrar.

49 The Registrar receives the documents deposited for registration; he dates them, enters in them the information required by the *Registration Act*, and makes the copies prescribed by that Act.

However, where registration is effected by memorial, he makes no copy of the document summarized by the memorial.

After assuring himself that, according to the documents produced, the person mentioned rightly becomes the holder of the right in question, he mentions the documents in the registers, indexes and books prescribed by law and returns the documents submitted, bearing the certificate of registration, to the person who required publication.

The schedule is retained in the archives by the Registrar.

50 Unless the court orders to the contrary, the Registrar may not enter in the index of immoveables the schedule accompanying a judicial decision, or any other act, until he has made sure that the title of the grantor or of the last title-holder is then published.

An exception to this rule is made where leases of immoveables, hypothecs and rights acquired without title, especially by prescription or accession, are published.

Publication made contrary to the first paragraph has no effect until the title of the grantor or the title-holder is published.

51 Unless he refuses to proceed with the registration sought, the Registrar, on the day he receives the document deposited, must enter the information contained in the schedule prescribed by Article 45 in the index of immoveables or in the central register of personal and moveable rights, as the case may be, and make a special entry there indicating that the registration certificate has not yet been issued.

He cancels this special entry as soon as the certificate is issued.

52 Any right published before the issue of the certificate is cancelled is subject to the rights covered in the documents dealt with in the special entry.

53 If the Registrar refuses to issue the registration certificate, the schedule, the indications in the index of immoveables or in the central register of personal and moveable rights, as the case may be, as well as the special entry, must be annulled immediately following the expiry of fifteen days after a notice to this effect is sent by the Registrar to the person who required the registration.

54 The Registrar mentions the registration certificate on the document deposited and, where applicable, in the document summarized by the memorial; in the latter case, the registration certificate bears the words: "registered by memorial".

55 The registration certificate mentions the date of registration and the registration number with, where applicable, a reference to the index of immoveables.

The certificate attests that the person whose name is given in it holds the rights described there.

It is signed by the Registrar and bears the date of its issue.

56 The Registrar, *proprio motu*, corrects any clerical errors in the registers or on a certificate of registration.

57 Any interested person may, by motion, request the court to correct or annul a registration certificate or any entry in the register.

As soon as the definitive judgment is registered, the Registrar issues a new certificate or corrects the entry.

The judgment correcting or annulling a certificate has effect with regard to all persons.

58 Registration is complete only when the formalities

prescribed by Article 49 have been fulfilled and the registration certificate has been issued.

59 The registration of any act of subrogation or of transfer of a hypothecary claim must be mentioned in the margin of the entry of the instrument creating the hypothec, with a reference to the entry number of the act of subrogation or of transfer.

60 The decisions made by the Registrar may be appealed in the manner prescribed in the *Registration Act.*

§ - 5 **Renewal of registration**

61 Registration may be renewed, if need be, on application by any person.

62 Registration is renewed by a new registration of the document in question or by registration of a notice describing the document, giving the date of its original registration, and specifying the property affected.

The new registration number, or the registration number of the notice, is mentioned in the margin of the original registration, as well as in the index of immoveables or in the central register of personal and moveable rights.

63 If the document was first registered in another registration division and no copy of it has been sent to the registry office of the new division, the notice of renewal must mention the place where the document was first registered.

64 Registration by entry, in either the index of immoveables or the central register of personal and moveable rights, as the case may be, of any act by which a person has acknowledged his indebtedness or assumed payment of a debt, stands in lieu of renewal of registration of the hypothec.

Section III

Plans and books of reference

65 Once the plan and the book of reference have been deposited in the registry office, and after the proclamation required by the *Registration Act*, the number assigned to each lot on the plan and in the book of reference becomes its sole designation and suffices in any document.

Where a part of a lot is concerned, its measurements and adjacent properties must also be mentioned.

66 If there is no such designation, the schedule may not be entered in the index of immoveables, unless a notice is registered indicating that the number on the plan and in the book of reference and, in the case of part of a lot, the adjacent properties, is that of the lot which is to be affected by the registration.

67 If there is no plan and book of reference, the immoveable must be described by indicating its adjacent properties and, where applicable, by giving the name by which it is known.

68 However, an alienation for rent or a right to cut timber on public land is sufficiently described in any document if it is designated as an alienation for rent, a timber limit or a cutting license and if the public lands affected by that right are described in the same manner as in the lease or in the license in force.

69 The same applies to hunting or fishing rights and to mining rights, if the immoveables affected by them are designated in the same manner as in the document granting them.

70 In the event of a subdivision or redivision, the number given on the plan and in the book of reference to each lot for

the subdivision or redivision is its sole designation and suffices in any document.

Articles 65, 66, 67, 68 and 69 apply to subdivision and redivision lots.

71 When part only of a lot is subdivided, it is sufficient, for the designation of that part which is not subdivided, to refer to it as part of that lot.

72 Any person who subdivides land designated in the plan and in the book of reference into lots must deposit a new plan and book of reference, certified by the owner, in accordance with the *Registration Act*.

The Registrar may not register any document relating to the transfer of an immoveable which is not specifically indicated on the plan and in the book of reference, except for those registration divisions or parts of them designated by the government in an order published in the *Québec Official Gazette*.

73 No declaration of condominium may be registered, unless the immoveable concerned is indicated on the plan and in the book of reference providing each exclusive part, and the common parts, with a cadastral number identifying them.

74 A subdivision or part of a subdivision may always be substituted for any subdivision or part of a subdivision deposited by the owner or any other interested person by depositing the plan and book of reference, as is provided in Article 72.

75 The plan and book of reference for each redivision made by an interested person and deposited at the office of the Minister of Lands and Forests must be accompanied by a certificate from the Registrar of that registration division, indicating whether any immoveable right has been registered against any of the lots included in the redivision.

The Minister must then cancel the former plan and book of reference and send a copy, certified by him, of the plan and book of reference of the new redivision to the Registrar who must immediately return to the Minister the plan and book of reference which the new ones replace.

76 The plan and book of reference for each subdivision or redivision, deposited at the office of the Minister of Lands and Forests under Articles 72, 73, 74 and 75, must be accompanied by a concordance notice establishing a link between the new and old cadastral designations.

The Minister sends this notice to the Registrar who enters it in the index of immoveables, opposite the old and the new lots.

77 Within six months after the date set by proclamation of the government for the putting into force of Article 65, or within six months after the subdivision or the redivision mentioned in Articles 70, 72, 73 and 74 in any registration division, or within six months after the Minister of Lands and Forests replaces the plan and book of reference in accordance with Article 75, the Registrar of the division concerned must renew the publication of any right, including that of ownership, affecting an immoveable located within that division.

Once the publication is renewed, the Registrar must notify the holder of the rights as soon as possible, by registered or certified mail.

78 During the six months provided in the preceding article, all rights published prior to the proclamation, the subdivision or redivision, or replacement are deemed published as if the renewal had been made.

After that period, they may be invoked only from the moment of their publication.

79 The holder of a right concerning an immoveable may, in

his own right and at any time, make the renewal provided for in Article 77.

80 Where the Registrar does not renew the publication within the period of time provided for in Article 77, the holder of the non-renewed right may apply to the Indemnity Fund for reparation of any damage suffered as a result.

81 An immoveable right may not be affected by errors in the plan and book of reference.

No error in the designation, extent or name of an immoveable may be interpreted as giving a person more rights in an immoveable than those which his title gives him.

CHAPTER V

EFFECTS OF PUBLICATION

Section I

Beneficiaries of publication

82 Publication benefits every person whose rights are described in the document submitted for publication.

If, however, in any document submitted for publication, mention is made of a right described in an earlier document but not published, this does not have the effect of publishing that right.

83 Publication does not interrupt prescription.

However, publication of any act transferring an immoveable right interrupts prescription with regard to that right.

84 Publication of rights concerning property, which is

effected after the property is seized or, in the case of an immoveable, after the notice of seizure is published, has no effect when the seizure is followed by judicial expropriation, provided, in the case of an immoveable, that a notice of seizure has been published.

85 Publication of an instrument creating a debt preserves for the creditor, in the same rank as for the principal, the interest due for the current year and for the two previous years.

86 Publication of an instrument creating an annuity preserves a preference for the arrears due for the current year and for the two previous years.

87 A creditor has a hypothec for the surplus arrears of interest or annuities only from the date of publication of a notice, in accordance with Article 380 of the Book on *Property*, stating the amount of arrears claimed.

Nevertheless, the interest due at the time of the first publication, the amount of which is stated there, is preserved by that publication.

Section II

Opposability and rank of rights

88 Rights, whether published or not, have effect between the parties, subject to express provision of law.

89 Rights subject to the formality of publication may be set up against third parties only from the time of their publication.

90 Rights rank according to the date of their publication; if two documents respecting the same immoveable are published on the same day, preference is accorded to the earliest document, the whole subject to the provisions of this Code governing publication of hypothecs.

Section III

Protection of third parties

91 When the cause of nullity, resolution, resiliation, revocation or extinction of an immoveable right or of a decree affecting an immoveable right does not appear on the published titles, the judgment pronouncing it cannot affect the acquired rights of third parties.

92 A third party who has acted in good faith on the strength of the registers, index or books, or of a registration certificate, and whose rights are subsequently affected by a judgment ordering correction, annulment or retraction, may claim reparation for any damage he suffers from the Indemnity Fund provided for in the *Registration Act.*

93 When the Registrar fails to perform any of his duties, the person who suffers damage has recourse in damages against the Indemnity Fund provided for in the *Registration Act.*

CHAPTER VI

CANCELLATION

Section I

Formalities and effects of cancellation

94 Registration or renewal of registration is cancelled with the consent of the parties or, failing consent, by final judgment.

95 The Registrar cancels *proprio motu* any hypothec extinguished following expiry of the period for validity of its registration or renewal, as well as any hypothec extinguished under Article 441 of the Book on *Property.*

96 Subject to Article 99, registration of a declaration of family residence is cancelled, upon application by any interested person, only when:

1. the consorts consent to the cancellation;
2. one of the consorts has died;
3. the consorts are separate as to bed and board or are divorced;
4. the marriage is annulled;
5. the immoveable has been alienated with the consent of the consorts or with judicial authorization, in accordance with Article 50 of the Book on *The Family*.

97 Total or partial discharge of a debt entails consent to its cancellation for as much.

98 If the cancellation is not consented to, any interested person may apply to the court for it, subject to all other recourses.

99 Cancellation must be ordered when registration or renewal has been made without right, irregularly or upon a title which is null or informal, or when the registered right is annulled, resolved, resiliated or extinguished by prescription or in any other manner.

It must also be ordered when the immoveable is no longer the principal family residence.

100 A hypothec may be cancelled in the manner provided for in Section 70 of the *Deposit Act*, upon deposit of a sum sufficient to cover the capital and interest of the claim, and the costs, even in cases of contestation.

When only part of a claim has been deposited, cancellation may be obtained for as much.

101 On motion by any interested person, the court, in

addition to the cases contemplated in Article 805 of the Code of Civil Procedure, may order cancellation of a prenotation if the circumstances justify it.

This rule applies, in particular, when the person whose right is affected by prenotation has at his disposal a peremptory means to set up against the prenoted right, or when the holder of the prenoted right is unknown or cannot be found, or when it is established that the holder does not intend to avail himself of his right.

102 Subject to Article 95, a hypothec securing a life annuity or a life usufruct and, where applicable, a hypothec accompanying these rights is cancelled with the consent of the beneficiary of the annuity or of the usufruct, or upon submission of a certificate of death, a declaratory judgment of death or a declaratory judgment of absence regarding the person on whose life the rent or usufruct was established, along with a declaration concerning the identity of that person.

103 The act indicating consent to the cancellation, the discharge or the certificate of release, or the judgment replacing it, must bear the registration number of the act to be cancelled, and the designation of the property concerned.

104 Consent to the cancellation of a principal right entails consent to the cancellation of its accessories and of all references appearing in the registers.

105 Cancellation is made by the deposit of the act or of the judgment, for the purpose of cancellation, reference to which is made in the margin of the document attesting to the creation or existence of the right cancelled, and in the index of immoveables or, as the case may be, in the central register of personal and moveable rights.

Deposit of the act or the judgment, for the purpose of cancellation, is made in the same manner as their registration.

106 A judgment establishing the nullity, resolution, resiliation, revocation or extinction of a published right may not, however, be deposited for cancellation if it is not accompanied by a certificate establishing that the prescribed periods for appeal have expired and no appeal has been filed, unless the judgment has been rendered with the consent of the parties, mention of which is made in the judgment.

107 Prior to registration, the judgment mentioned in the preceding article must be served on the defendant in the usual manner.

However, a judgment rendered under Article 805 of the Code of Civil Procedure need be served only if the judge so orders.

108 The cancellation which has been made without right, or as the result of an error, is annulled by court order, on motion by any interested person.

Annulment of the cancellation does not affect the rights of any third party in good faith who has published his right after the cancellation.

A person who suffers prejudice by reason of the erroneous cancellation may claim reparation from the Indemnity Fund for the damage sustained.

Section II

Judicial sales and other forced sales

109 The deed of a judicial sale of an immoveable must be registered, at the expense of the purchaser, by the prothonotary of the Superior Court or by the sheriff when the latter has proceeded with the sale, and before any copy of it is delivered.

110 Upon registration of a deed of judicial sale or of another forced sale, the Registrar cancels all rights which have been

discharged by that sale, and mentions this cancellation in the margin of the document establishing the creation or existence of the right so extinguished, and in the index of immoveables.

111 Articles 94, 103, 105, 106 and 107 apply to the registration of any judgment for re-entry upon abandoned lands, and to the cancellation of the registration of any deed of sale declared null by that judgment.

However, Article 107 does not apply if the purchaser has been notified in the manner prescribed by Article 139 of the Code of Civil Procedure.

112 Notices of judicial sales and of other forced sales must be registered.

The registration is governed in particular by the *Registration Act*.

113 When the judicial sale or other forced sale takes place, mention of the notice of seizure, where applicable, and of the notice of sale is cancelled upon registration of the deed of sale.

114 When there has been no judicial sale or other forced sale, the notices mentioned in Article 112 are cancelled upon deposit of a certificate from the prothonotary or the person entrusted with the sale, establishing this fact.

Mention of this is made in the index of immoveables and in the margin of the last document registered following the mention of the seizure or sale.

115 Within eight days after the adjudication, the person entrusted with the sale for taxes must submit for registration a list of the immoveables sold for municipal taxes, by depositing it *in extenso*.

The Registrar must mention the sale in the index of

immoveables and in the margin of the last document registered for each lot or part of a lot so sold, writing the words, "Sold for taxes, No.".

116 Entry of a sale for municipal taxes is cancelled by registration either of a municipal deed of sale, or of a deed stating that the immoveable has been redeemed and by entry of this redemption in the index of immoveables and in the margin of the last document registered after the sale for taxes.

BOOK NINE

PRIVATE INTERNATIONAL LAW

PRELIMINARY CHAPTER

APPLICATION OF LAWS

1 The rules of internal law apply subject to the rules of private international law.

The rules of private international law apply subject to treaties in force.

2 For the purposes of this Book, when a State includes several territorial units with separate legal systems, each territorial unit is considered as a State.

CHAPTER I

GENERAL PRINCIPLES

3 Characterization is made according to the law of the court seized of the case.

Characterization of property as moveable or immoveable, however, is made according to the law of the place where the property is actually situated.

4 When, by virtue of the rules of private international law, the law of a foreign State is applicable, it is only the internal law of that State which applies.

5 Foreign law does not apply when its provisions are manifestly incompatible with public order as understood in international relations.

No foreign decision or arbitration award is recognized or enforced if it is manifestly incompatible with public order as understood in international relations.

6 The courts do not take account of voluntary changes of

connecting factors accomplished in order to evade the imperative rules of the court seized of the case.

CHAPTER II

CONFLICTS OF LAWS

7 The status and capacity of physical persons are governed by the law of their domicile, subject to express provision of law.

8 An incapacity established by the law of the domicile of one of the parties may not be set up against a party, domiciled elsewhere, who contracted without imprudence and without knowledge of such incapacity in the State of his own domicile if the law of that State imposes no such incapacity.

9 The qualities and conditions necessary for contracting marriage are governed, as regards each future consort, by the law applicable to his status.

The effects of marriage, except those governed by express provisions, are subject to the law of the common domicile of the consorts when those effects are at issue or, in the absence of such a domicile, to the law of their last common domicile or, in the absence of a last common domicile, to the law of the place of celebration.

10 Divorce and separation as to bed and board are governed by the law of the common domicile of the consorts or, in the absence of such a domicile, by the law of the court seized of the case.

The effects of divorce and of separation as to bed and board, except those governed by express provisions, are subject to the law governing the divorce or separation.

11 Filiation is governed by the law of the domicile of the child at the time of his birth.

Legitimation by marriage is governed by the law applicable to the effects of the marriage.

The effects of filiation are governed by the law of the domicile of the child when the effects are at issue.

12 The conditions for adoption are governed by the law of the State where the adoption takes place.

The effects of adoption are governed by the law of the domicile of the adopted person when the effects are at issue.

13 The right to custody of children is governed by the law of the court seized of the case.

14 The obligation to support is governed by the law of the domicile of the creditor.

15 In matters of support between ascendants and descendants beyond the first degree, between collaterals and between persons connected by alliance, it is a valid defence to show that, by the law of the defendant's domicile, there is no obligation to provide support to the plaintiff.

16 The obligation to support between persons who are divorced or separated or whose marriage has been annulled is governed by the law applicable to the divorce, separation or annulment.

17 Protection of incapable persons is governed by the law of their domicile.

18 In cases of urgency or serious inconvenience, the law of the forum may be applied provisionally to ensure protection of a person or of his property.

However, once the measures required by the law of the domicile of that person have been taken and can be applied in Québec, those taken by virtue of the previous paragraph are terminated, without prejudice to their definitive effects.

19 Legal persons are governed by the law of the place of their creation, subject, regarding their activities, to express provision of law of the place where they carry them on.

20 The form of juridical acts is governed by the law of the place where the act is passed.

An act relating to patrimony is nevertheless valid if made in the form required by the law applicable to the substance of the act or by that of the place where the property which is its object is situated.

A gift may also be made in the form prescribed by the law of the domicile or of the nationality of the donor or the testator, either when the gift was made or, in the case of a will, at the time of death.

An act may also be received by a diplomatic or consular agent, as well as by a general representative of Québec abroad, when acting within the scope of the powers fixed by the law which establishes them and according to the forms provided by that law, subject to the recognition of those powers by the law of the place where the agent or representative performs his duties.

An act may also be received outside Québec by a Québec notary, when it deals with real rights whose objects are situated in Québec, or when the parties or either of them have their domicile there.

21 Juridical acts of an international character are governed by the law of the State expressly designated by the parties.

In the absence of express designation, the courts apply

the law of the State which, at the time the act was made, and considering the nature of the act and the surrounding circumstances, was the most qualified to govern.

22 When a sale of corporeal moveable objects is international in character, it is governed by the law of the State expressly designated by the parties.

In the absence of express designation, the sale is governed by the law of the State where the vendor is domiciled at the time he receives the purchase order. If the purchase order is received by an establishment of the vendor, the sale is governed by the law of the State where the establishment is situated.

However, the sale is governed by the law of the State where the purchaser is domiciled, or in which he has the establishment which gave the purchase order, if the purchase order was received in that State by the vendor or his representative.

In the case of a transaction on an exchange, or of a sale at auction, the sale is governed by the law of the State where the exchange is located or where the auction takes place.

23 In the absence of express provision to the contrary, the law of the State where the inspection of the corporeal moveable objects delivered by virtue of the sale must take place is applicable to the following matters: the form and the periods within which the inspection must take place, the notices which must be given with respect to the inspection, and the measures to be taken in case of refusal of the objects.

24 The sale of corporeal moveable objects, when it is of an international nature, includes documentary sale and contracts for the delivery of corporeal moveable objects to be manufactured or produced, when the party who has agreed to deliver must supply the raw materials necessary for manufacture or production.

25 A contract contemplated in the *Consumer Protection Act* is governed by the law applicable in Québec if the consumer is domiciled there.

Any agreement to the contrary is of no effect.

26 Matrimonial regimes established by contract are governed by the law designated by Article 21.

The matrimonial regime of consorts married without a marriage contract is governed by the law of their common domicile at the time of the marriage or, in the absence of such a domicile, by that of their first common domicile, or, in the absence of such a domicile, by the law of their common nationality, or, in the absence of one and the other, by the law of the place where the marriage was celebrated.

Change of a matrimonial regime is governed by the law of the common domicile of the consorts at the time of the change or, in the absence of such a domicile, by the law which governs their regime.

27 Insurance contracts are governed by the law of Québec if the insured applies for insurance in Québec and is domiciled there at the time.

Contracts of insurance of things relating to an immoveable situated in Québec is governed by the law of Québec.

In group insurance of persons, the rights and obligations of a participant and his beneficiary are governed by the law of Québec if the participant is domiciled in Québec when he joins the insurance plan.

Any agreement to the contrary is of no effect.

28 Any sum of money due under a contract contemplated in the preceding article is payable in Québec.

Any agreement to the contrary is of no effect.

29 The validity of international arbitration agreements is governed by Article 21.

Arbitration is governed by the rules expressly designated by the parties or, in the absence of express designation, by the law applicable to the validity of the arbitration agreement.

30 Extra-contractual obligations based on unjustified enrichment are governed by the law of the place of occurrence of the act from which they derive.

31 Extra-contractual civil responsibility is governed by the law of the domicile of the plaintiff at the time the act which caused the damage occurred.

However, the defendant may raise a defence, based on the lawfulness of the act and the absence of any obligation for him to repair, according to the law of the place where the act which caused the damage occurred, provided he had his domicile there.

32 The manufacturer whose product has caused damage may not invoke the second paragraph of the preceding article, unless he establishes that he could not reasonably have foreseen that the product, or other products of his of the same type, would be marketed in the State where the plaintiff was domiciled.

The word "products" includes natural and industrial products, whether raw or manufactured, moveable or immoveable.

The word "manufacturer" includes the manufacturer of finished products or of their constituent parts, the producer of natural products, the supplier of products, and any other person, including repairmen and warehousemen, who take

part in the preparation and commercial distribution of products.

This article also applies to the agent or employee of any of the above-named persons.

33 Property rights in individual things are governed by the law of the place where the property is actually situated.

34 The law applicable to a sale of corporeal moveable objects, when the sale is of an international character, determines, as between the parties:

1. the moment until which the vendor is entitled to the products and fruits of the objects sold;
2. the moment until which the vendor bears the risks with respect to the objects sold;
3. the moment until which the vendor is entitled to damages with respect to the objects sold; and
4. the validity of clauses reserving ownership for the benefit of the vendor.

35 Subject to Articles 36 and 37, the transfer to the purchaser of the ownership of the objects sold, with respect to all persons other than the parties to the contract of sale, is governed by the law of the State where the objects are situated when a claim or a seizure is made against them.

However, the purchaser retains ownership conferred upon him by the law of one of the States where the objects sold were previously situated.

Furthermore, in the case of a documentary sale in which the documents represent the objects sold, the purchaser retains the ownership conferred upon him by the law of the State where he received the documents.

36 Opposability to creditors of the purchaser, of the rights

of the unpaid vendor in the objects sold, such as security and the right to possession or ownership, particularly by virtue of an action in resolution or a clause of reservation of ownership, is governed by the law of the State where the objects sold are situated at the time of the first claim or seizure concerning them.

In the case of a documentary sale in which the documents represent the objects sold, the opposability, to creditors of the purchaser, of the rights of the unpaid vendor in the objects, is governed by the law of the State where the documents are situated at the time of the first claim or seizure concerning them.

37 The rights which a purchaser may set up against a third party who claims ownership of the objects sold, or any other real right in the objects, are governed by the law of the State where these objects are situated at the time of the claim.

However, the purchaser retains all the rights conferred upon him by the law of the State where the objects sold were situated at the time he was given possession.

In the case of a documentary sale in which the documents represent the objects sold, the purchaser retains the rights conferred upon him by the law of the State where he received the documents, subject to the rights granted by the law of the State where the objects sold are situated to a third party who presently has possession of them.

38 Except as regards the application of paragraphs 2 and 3 of the preceding article, objects sold which are either in transit in the territory of a State, or outside the territory of any State, are deemed situated in the State from which they were sent.

39 A hypothec on moveable property not situated within Québec may be created and published according to the law applicable in Québec.

40 A security created outside Québec on moveable property may be published in Québec, even when the property affected is not situated there.

The publication has no effect, however, unless the property is brought into Québec within thirty days after the publication.

41 A security published outside Québec on moveable property which is subsequently brought into Québec, is deemed to have been published in Québec.

The security must, however, be published in Québec either before the day on which publication ceases according to the law of the place where the security was published, or before the expiry of thirty days following the day on which the property enters the province, whichever occurs first.

42 The following must be published at the place of the domicile of the grantor:

1. a security on incorporeal moveable property, except property the situation of which is fixed in Québec by law, and property affected by a security which must be published, according to Québec law, through giving possession to the creditor; and

2. a security on corporeal moveable property generally used in more than one State, and consisting of equipment used by its owner or leased to others.

If the grantor changes his domicile, the security must be published in the place of his new domicile, either before the date on which publication ceases at the place of his former domicile, or before the expiry of thirty days from the date of the change of domicile, whichever occurs first.

The security must, however, be published in Québec if the law of the place where the grantor is domiciled makes no

provision for publication of security on moveable property by registration.

43 Succession to moveable property is governed by the law of the domicile of the deceased.

44 Succession to immoveable property is governed by the law of the place where it is actually situated.

45 Burden of proof is governed by the law applicable to the substance of the case.

Admissibility of modes of proof, and their probative value, are governed by the law applicable to the substance of the case, subject to any more favourable rules of the law of the court seized of the case.

46 Prescription is governed by the law applicable to the substance of the case.

47 Procedure is governed by the law of the court seized of the case.

CHAPTER III

CONFLICTS OF JURISDICTIONS

48 In matters involving personal rights of a patrimonial nature, the courts of Québec have general jurisdiction when:

1. the defendant is domiciled in Québec or, if the defendant is a legal person, if it was incorporated in Québec or has its head office, a place of business, or a branch office for disputes relating to its activities in Québec;

2. the cause of action has arisen in Québec;

3. the parties, by an express choice of forum agreement, have submitted to Québec courts any existing or future

dispute between themselves relating to a specific legal relationship; or

4. the defendant has submitted himself to the jurisdiction of Québec courts, either expressly or by contesting on the merits without reservation as to jurisdiction.

49 In matters of insurance, the courts of Québec also have general jurisdiction when:

1. the insurance contract was concluded in Québec;

2. the person concerned is domiciled in Québec at the time of the action;

3. the insurance contract relates to an insurable interest situated in Québec; or

4. the loss took place in Québec.

50 In matters involving real rights, the courts of Québec have general jurisdiction if all or part of the property in dispute is situated in Québec.

51 In matters of succession, the courts of Québec have general jurisdiction when:

1. the succession devolves in Québec;

2. all or part of the property of the deceased is situated in Québec; or

3. the defendant, or one of the defendants, is domiciled in Québec.

52 The authorities of the State in which a person is domiciled have jurisdiction to take any measures intended to protect the person and his property.

However, in cases of urgency or serious inconvenience, the authorities of Québec may take such measures as they deem necessary for the protection of the person and property of a person domiciled abroad but present in Québec. They may also terminate such protection.

53 In matters of nullity of marriage, the courts of Québec have jurisdiction when:

1. one of the consorts is domiciled in Québec; or
2. the marriage was celebrated in Québec.

54 In matters of divorce, separation as to bed and board, or separation as to property, the courts of Québec have jurisdiction if one of the consorts is domiciled in Québec.

55 Jurisdiction of the Québec courts established by virtue of Articles 53 and 54 also entails jurisdiction with respect to accessory measures, subject to Article 59.

56 In matters or support, the courts of Québec have jurisdiction when:

1. one of the parties is domiciled in Québec; or
2. the defendant has contested on the merits without challenging the jurisdiction of the court.

57 In matters of filiation and legitimation, the courts of Québec have jurisdiction when the child is domiciled in Québec or resides there *de facto.*

58 In matters of adoption, the courts of Québec have jurisdiction if the person adopting is domiciled in Québec or if the adopted person is domiciled in Québec.

59 In matters of child custody, the courts of Québec have jurisdiction if the child is domiciled or present in Québec.

CHAPTER IV

RECOGNITION AND ENFORCEMENT OF FOREIGN DECISIONS

60 Subject to Articles 74 and following, the courts of Québec recognize and declare enforceable judicial decisions

rendered outside Québec, in civil and commercial matters, unless the defendant proves:

1. that the original authority had no jurisdiction in accordance with Article 65;

2. that the foreign decision may be subject to normal forms of review according to the law of the place where it was rendered;

3. that the foreign decision is not enforceable at the place where it was rendered;

4. that the foreign decision orders provisional or conservatory measures;

5. that the foreign decision was obtained by fraud in the procedure;

6. that proceedings between the same parties, based on the same facts and having the same purpose, either resulted in a decision rendered in Québec, whether having the force of *res judicata* or not, or are pending before a Québec court, first to be seized of the matter.

61 A decision rendered by default will not be recognized and declared enforceable unless the plaintiff proves that the defaulting party received notice of the institution of proceedings in accordance with the law of the place where the decision was rendered.

However, the judge may refuse recognition or enforcement if the defaulting party proves that, in view of the circumstances, he was not able to learn of the institution of the proceedings or did not have sufficient time to present his defence.

62 Recognition or enforcement may not be refused merely because the court of origin has applied a law other than that which would have been applicable according to Québec private international law rules.

63 Subject to the requirements of Articles 60 to 62, the

courts of Québec do not review the merits of decisions rendered outside Québec.

64 In determining the jurisdiction of the court of origin, the courts of Québec are bound by the findings of fact on which the court of origin based its jurisdiction, unless the decision was rendered by default.

65 The court of origin is considered to have jurisdiction when:

1. the defendant was domiciled in the jurisdiction of the court of origin at the time the proceedings were instituted or, if the defendant is not a physical person, had there its place of incorporation or its head office;

2. the defendant possessed a commercial, industrial or other business establishment, or a branch office in the jurisdiction of the court of origin at the time the proceedings were instituted, and was cited there in proceedings relating to their activity;

3. the action had as its object a dispute relating to immoveable property situated in the place of the court of origin;

4. the act which caused the damage upon which the action is based occurred in the jurisdiction of the court of origin, and the author of the damage was present at that time;

5. by a written agreement, the parties have agreed to submit to the jurisdiction of the court of origin disputes which have arisen or which may arise in respect of a specific legal relationship, unless the law of Québec would, in this case, give exclusive jurisdiction to its courts;

6. the defendant has contested on the merits without challenging the jurisdiction of the court or making reservation to it; however, the jurisdiction will not be recognized if the defendant has contested on the merits in order to resist the seizure of property or to obtain

mainlevée, or if the law of Québec would, in this case, give exclusive jurisdiction to its courts; or

7. the person against whom recognition or enforcement is sought was the plaintiff in the proceedings in the court of origin and was unsuccessful in those proceedings, unless the law of Québec would give, in this case, exclusive jurisdiction to its courts.

66 The court of origin is considered to have jurisdiction to try a counterclaim when:

1. it would have had jurisdiction to hear the counterclaim as a principal claim by virtue of paragraphs 1 to 6 of the preceding article; or

2. it had jurisdiction by virtue of the following article to hear the principal claim, and the counterclaim arose from the same contract or the same facts on which the principal claim was based.

67 On application by the defendant, the jurisdiction of the court of origin is not recognized by the courts of Québec when:

1. the law of Québec, either because of the subject matter or by virtue of an agreement between the parties, gives exclusive jurisdiction to its courts to hear the claim which gave rise to the foreign decision;

2. the law of Québec, either because of the subject matter or by virtue of an agreement between the parties, recognizes the exclusive jurisdiction of another court; or

3. the law of Québec recognizes an agreement by which exclusive jurisdiction is conferred upon arbitrators.

68 A party who seeks recognition or applies for enforcement must furnish:

1. a complete and authenticated copy of the decision;

2. if the decision has been rendered by default, the original or a certified true copy of the documents required to

establish that the defaulting party received notice of the institution of proceedings; and

3. a translation into French or English of the above mentioned documents, if they are not drawn up in either of those languages, certified as accurate by a diplomatic or consular agent, a translator under oath, or any other person so authorized in Québec or in the place of origin.

69 Recognition or enforcement of a decision rendered outside Québec is done by way of motion for exequatur, subject to Article 82.

If the decision deals with several claims which can be dissociated, recognition or enforcement may be partially granted.

A motion for exequatur must be brought before the Québec court within six years from the date on which the foreign decision can be enforced in the jurisdiction in which it was rendered.

70 A settlement confirmed by a court and enforceable in the place of origin is enforceable in Québec on the same conditions as a decision governed by Article 60, to the extent that those conditions apply to the settlement.

71 The courts of Québec may, on motion of one of the parties, decline to hear an action brought before them, or stay the action, if other proceedings between the same parties, based on the same facts and having the same object, are pending in a foreign court, on condition that the foreign proceedings may result in a decision which the courts of Québec would be bound to recognize by virtue of the preceding articles.

However, the courts of Québec may order provisional or conservatory measures, regardless of which court is seized of the merits of the dispute.

72 Matters relating to the interest payable on a foreign decision are governed by the law of the court of origin.

73 When a foreign decision orders a debtor to pay a sum of money expressed in foreign currency, the Québec court converts this sum into Canadian currency at the rate of exchange prevailing at the time the decision became enforceable in the jurisdiction in which it was rendered.

74. The courts of Québec recognize decisions rendered outside Québec in matters of nullity of marriage when:

1 at the time of the action, one of the consorts was domiciled within the jurisdiction of the authority seized;

2 the marriage was celebrated within the jurisdiction of the authority seized; or

3. at the time of the action, one of the consorts was a national of the State of the authority seized.

75 The courts of Québec recognize decisions rendered outside Québec in matters of divorce, separation as to bed and board, or separation as to property only when:

1. at the time of the action, one of the consorts was domiciled within the jurisdiction of the authority seized; or

2. at the time of the action, one of the consorts was a national of the State of the authority seized.

76 The courts of Québec recognize decisions rendered outside Québec in matters of filiation and legitimation when:

1. at the time of the action, the child was domiciled or resident *de facto* within the jurisdiction of the authority seized; or

2. at the time of the action, the child was a national of the State of the authority seized.

77 An adoption outside Québec is valid if effected by an authority competent under its own rules.

78 The courts of Québec recognize decisions rendered outside Québec in matters of custody of children and parental authority when:

1. at the time of the action, the child was domiciled or was present within the jurisdiction of the authority seized; or

2. at the time of the action, the child was a national of the State of the authority seized.

These decisions may nonetheless be reviewed by the courts of Québec if such a review is in the interest of the child.

79 The courts of Québec recognize and enforce decisions rendered outside Québec with regard to support when:

1. at the time of the action, one of the parties was domiciled within the jurisdiction of the authority seized;

2. at the time of the action, one of the parties was a national of the State of the authority seized; or

3. the defendant has contested on the merits without challenging the jurisdiction of the authority seized.

80 A decision rendered outside Québec which orders periodic payment of support may be recognized and declared enforceable as regards payments accrued and accruing.

81 The recognition and enforcement of decisions rendered outside Québec in matters of nullity of marriage, divorce, separation as to bed and board, filiation, adoption, custody and parental authority and, in matters of support, are also subject to sub-paragraphs 3 and 5 of Article 60, and to Articles 61, 62, 64, 68 and 70.

The matters referred to in the preceding paragraph, with

the exception of custody and parental authority, are also subject to Article 63.

82 A decision rendered outside Québec relating to the status or capacity of persons has effect in Québec without exequatur, except where the decision orders measures of restraint on persons or execution upon property.

CHAPTER V

RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRATION AWARDS

83 The courts of Québec recognize and declare executory, in civil and commercial matters, arbitration awards rendered outside Québec or awards rendered in Québec not in accordance with Québec arbitration rules, unless the party against whom it is invoked proves:

1. that one of the parties to the arbitration agreement was incapable according to the law applicable to him, or that the agreement is not valid according to the law designated in Article 29;

2. that the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration procedure, or was otherwise unable to present his case;

3. that the award deals with a dispute not contemplated by the arbitration agreement or which does not fall within its terms, or that it contains decisions beyond the terms of the agreement; however, if the decisions on matters submitted to arbitration can be dissociated from those not so submitted, the former may be recognized and declared enforceable;

4. that the constitution of the arbitration tribunal or the arbitration procedure was not in accordance with the agreement of the parties, or, in the absence of an

agreement, was not in accordance with the law designated in Article 29; or

5. that the award has not yet become binding on the parties, or has been annulled or suspended by a competent authority in the State by virtue of whose laws the award was made.

84 A person who seeks recognition or applies for enforcement must furnish:

1. the duly authenticated original award or a copy fulfilling the necessary conditions for authenticity;

2. the original arbitration agreement or a copy fulfilling the necessary conditions for authenticity; and

3. a translation into French or English of the above mentioned documents, if the documents are not drawn up in either of those languages, certified as accurate by a diplomatic or consular agent, a translator under oath, or any other person so authorized in Québec or in the place of origin.

85 Recognition or enforcement of an arbitration award contemplated in the preceding articles is effected by way of motion for homologation.

CHAPTER VI

IMMUNITY FROM CIVIL JURISDICTION AND EXECUTION

86 Foreign States, foreign sovereigns and international organizations are immune from civil jurisdiction in Québec, except as regards actions relating to a commercial activity of any kind.

87 Foreign sovereigns are not obliged to give evidence as witnesses.

88 No measures of execution may be taken against a foreign State, a foreign sovereign or any international organization, except in the case provided for in Article 86 and in the case of waiver of immunity from execution.

The execution must not infringe the inviolability of the person or residence of the sovereign or of the headquarters of the international organization.

89 In Articles 90 to 99, the following expressions mean:

1. "head of mission": the person charged by the sending State or international organization to act in that quality;
2. "members of the mission": the head of the mission and the members of the staff of the mission;
3. "members of the staff of the mission": the members of the diplomatic staff, the administrative and technical staff and the service staff of the mission;
4. "members of the diplomatic staff": the members of the staff of the mission who have diplomatic rank;
5. "diplomatic agent": the head of the mission or any member of the diplomatic staff of the mission;
6. "members of the administrative and technical staff": the members of the staff of the mission employed in the administrative and technical service of the mission;
7. "members of the service staff": the members of the staff of the mission in the domestic service of the mission;
8. "premises of the mission": the buildings or parts of buildings and the land ancillary to them regardless of ownership, used for the purpose of the mission, including the residence of the head of the mission;
9. "consular post": any consulate-general, consulate, vice-consulate or consular agency;
10. "head of a consular post": the person charged with the duty of acting in that quality;

11. "consular officer": any person, including the head of a consular post, entrusted as such with the exercise of consular functions;

12. "consular employee": any person employed in the administrative or technical service of a consular post;

13. "member of the service staff": any person employed in the domestic service of a consular post;

14. "members of the consular post": consular officers, consular employees and members of the service staff;

15. "members of the consular staff": consular officers, other than the head of a consular post, consular employees and members of the service staff.

90 The premises of every mission, its furnishings, all property thereon, and its means of transport, are exempt from seizure and execution.

All papers, correspondence and property of the diplomatic agent, in his private residence, are exempt from seizure or execution, subject to Article 93.

91 Diplomatic agents are immune from civil jurisdiction except as regards:

1. real actions relating to private immoveable property situated in Québec, unless he holds it on behalf of the sending State for the purposes of the mission;

2. actions relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee, as a private person and not on behalf of the sending State; or

3. actions relating to a professional or commercial activity exercised by the diplomatic agent outside his official functions.

92 Diplomatic agents are not obliged to give evidence as witnesses.

93 No measure of execution may be taken in respect of any diplomatic agent except in the cases provided for in Article 91 and provided the execution may be accomplished without infringing the inviolability of his person or of his residence.

94 Consular officers and consular employees in residence in Québec are immune from civil jurisdiction as regards acts performed in the exercise of their consular functions.

The preceding paragraph does not apply, however, to civil actions:

1. arising out of a contract concluded by a consular officer or a consular employee in which he did not contract expressly or implicitly as an agent of the sending State; or

2. instituted by a third party for damage arising from an accident caused in Québec by a vehicle, vessel or aircraft.

95 The members of a consular post are not obliged to give evidence concerning matters connected with the exercise of their functions, or to produce official correspondence and documents relating thereto.

They may also decline to give evidence as expert witnesses with regard to the law of the sending State.

96 No measure of execution may be taken against a consular officer or consular employee in residence in Québec in respect of acts performed there in the exercise of his consular functions, except in the cases provided for in sub-paragraphs 1 and 2 of the second paragraph of Article 94.

97 Foreign States, foreign sovereigns and international organizations may waive the immunity from civil jurisdiction which they enjoy in Québec, as well as that enjoyed by their diplomatic agents, the members of their consular posts, and the persons mentioned in Articles 98 and 99.

The waiver must always be express and must be communicated in writing to the Minister of Intergovernmental Affairs.

A physical or legal person who enjoys immunity from jurisdiction and who institutes proceedings is precluded from invoking immunity from jurisdiction in respect of any counterclaim directly connected with the principal claim.

Waiver of immunity from jurisdiction in respect of civil proceedings is not held to imply waiver of immunity in respect of execution of the judgment; a separate waiver is necessary for the execution.

98 The members of the family of a foreign sovereign or diplomatic agent who form part of his household enjoy the immunities specified in Articles 86 to 88 and 91 to 93, provided they are not Canadian citizens.

The members of the administrative and technical staff of the mission, or accompanying a foreign sovereign, enjoy immunity from civil jurisdiction in relation to acts performed in the exercise of their duties, provided they are not Canadian citizens and are not permanently resident in Canada.

The members of the service staff of the mission, or accompanying a foreign sovereign, are immune from civil jurisdiction in relation to acts performed in the exercise of their duties, provided they are not Canadian citizens and are not permanently resident in Canada.

99 Diplomatic agents who are Canadian citizens or permanently resident in Canada enjoy immunity from civil jurisdiction in Québec only in relation to official acts performed in the exercise of their duties.

100 The persons listed in this chapter enjoy the immunities specified therein:

1. in the case of a foreign State, foreign sovereign or

international organization, from the time of his or its recognition by Canada;

2. in the case of diplomatic agents, from the time of their accreditation;

3. in the case of consular officers and consular employees, from the time when they begin their consular functions in Québec.

TABLES OF CONCORDANCE

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1 *		
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5 *		
6 par. 1	IX: 33, 44	
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7	IX: 20	
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11 *		
12 *		
13	I: 10, 11; V: 8 par. 2	
14 *		
15 *		
16 *		
17 *		
18 par. 1	I: 1	
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19	I: 15, 17	
20	I: 16	
21	I: 18	
22	I: 19	
23 par. 1 *in limine*	I: 20	
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27 *		
28 *		
39	I: 66 par. 2	
40 *		
41 *		
42 *		
42a *		
42b *		
42c *		
43 *		
44 *		

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Articles of the Civil Code	Articles of the Draft	Others
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46 *		
47 *		
48 *		
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50	I: 82	
51	I: 108 par. 2	
52 *		
53 *		
53a	I: 85	
53b *		
54	I: 87	
55 *		
56 *		
56a	I: 45, 46	
57 *		
58 *		
59 *		
60 *		
61 *		
62 *		
63	II: 19	
64	I: 91 par. 3	
65 s.-par. 1, 2, 3, 6	I: 91 par. 1	
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67	I: 98	
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69 *		
69a *		
70	I: 102	
71 par. 1	I: 103 par. 1	
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73	I: 104, 105, 106, 107, 216	
75	I: 108 par. 1	
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TABLE A

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85	I: 65	
86	I: 205	
87	I: 206	
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89 *		
90 *		
91 *		
92	I: 208	
93	I: 209	
94 *		
95 *		
96 *		
97 *		
98	I: 209	
99	I: 212	
100	I: 214	
101	I: 215	
102	I: 215	
103	I: 211 par. 1	
104	I: 218	
105	I: 219	
106	I: 220	
107	I: 217	
108	I: 210	
109	I: 210, 213	
110 *		
111 *		
113 *		
114 *		
115	II: 9	
116	II: 6 s.-par. 1	
117	II: 29	
118	II: 10	
119 *		

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Articles of the Civil Code	Articles of the Draft	Others
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121 *		
123 *		
124	II: 11	
125	II: 11	
126	II: 11	
127 *		
128	II: 16	
129 par. 1	II: 17	
par. 2	II: 18	
130	II: 21	
131 *		
132 *		
133 *		
134 *		
134a *		
134b	II: 22, 23	
135	IX: 20	
136	II: 12	
137	II: 12	
138	II: 12	
139	II: 12	
140	II: 13 par. 2	
141	II: 12	
142 *		
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144	II: 14	
147	II: 15	
148 par. 1	II: 27 s.-par. 1	
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149	II: 27 par. 2	
150 *		
151 *		
152	II: 25 s.-par. 2	
153	II: 25 s.-par. 4, 30	
154 *		
155 *		
156	II: 31	
157 *		
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160	II: 24	
161 *		
162 *		
163	II: 32, 34, 37, 38, 39	
164	II: 32, 35, 36, 39	
165	II: 336, 353	
166 *		
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168 *		
169	II: 340 par. 1	
170	II: 239, 347	
171	II: 344	
172	II: 344	
173	II: 41, 47, 336	
174	II: 42, 43, 354	
175	II: 41, 53	
176	II: 47	
177	II: 44	
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181	II: 51	
182	II: 50	
183	II: 52 par. 1	
184	II: 52 par. 2, 55	
185	II: 235, 259	
186	II: 240	
187	II: 240	
188	II: 240	
189	II: 240	
190	II: 240	
191	II: 240	
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198	II: 248	
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200	II: 249, 251, 252, 341	
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206	II: 259, 260	
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211 par. 1	II: 262	
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212	II: 236, 253, 254, 337, 342	
213	II: 236, 239, 257, 342, 347	
215 *		
216	II: 263	
217	II: 265	
218	I: 29; II: 266 par. 1	
219	II: 275 par. 1, 276	
220	II: 276	
221 *		
222 *		
223	II: 277	
224	II: 279	
225	II: 278	
226 *		
227	II: 267	
228	II: 282	
229	II: 282	
230	II: 283	
231	II: 284, 285	
232	II: 287	
233 *		
234	II: 288	
235 *		
236	II: 290	
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238 *		
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240	II: 353	
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241	II: 272	
242	II: 352	
243	II: 350	
244 *		
245	II: 353	
245a *		

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248	II: 354	
249	I: 126, 127, 136, 168 *in limine* s.-par. 1	
250	I: 169	
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252 *		
253 *		
254 *		
264	I: 137, 138 par. 1, 2, 142	
265	I: 170, 196 par. 1	
266	I: 129, 130	
267 *		
268 *		
269	I: 150	
270 *		
271 *		
272	I: 134	
273	I: 134	
274	I: 134	
275	I: 134	
276	I: 134	
277	I: 134	
278	I: 134	
282 s.-par. 1	I: 133 s.-par. 1	
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284	I: 133 s.-par. 4	
285	I: 156, 162	
286	I: 155, 162	
287 *		
288	I: 160 par. 1	
289	I: 157, 158	
290	I: 125, 141, 146; IV: 525	
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294 *		
295 *		

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298	I: 146	
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301	III: 85	
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303	V: 453	
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307 *		
308	I: 235	
309 *		
310	I: 235	
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314	I: 111 par. 2	
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324	I: 111 par. 1, 112	
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338 *		
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343	I: 181, 182	
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349 *		
350 *		
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353	I: 241, 272	
354	I: 273	
355 *		
356	I: 7, 293	
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358	I: 7, 248	
359	I: 247, 277, 292	
360	I: 247, 248, 292	
361	I: 241	
362 *		
363	I: 271, 274	
364	I: 7	
365	I: 252	
366 *		
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369	I: 267	
370	I: 267	
371	I: 268, 270	
374	IV: 3	
375	IV: 9	
376	IV: 5	
377 *		
378	IV: 6	
379	IV: 7, 10	
380	IV: 7, 10	
381	IV: 9	
382 *		
383 *		
384 *		
385 *		
386	IV: 8	
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390 *		
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392 *		
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395 *		
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401	IV: 18	
402 *		
403 *		
404 *		
405	IV: 19	
406	IV: 34	
407	IV: 43	
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409 *		

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416	IV: 75	
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418	IV: 83	
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441s	IV: 223	
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442	IV: 231	
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442f	IV: 237	
442g	IV: 238	
442h	IV: 239	
442i	IV: 240	
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442k	IV: 242	
442l	IV: 243	
442m	IV: 244	
442n	IV: 245	
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452	IV: 104	
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454	IV: 142	
455	IV: 116 par. 1, 2, 117	
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460	IV: 118	
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485	IV: 147	
486	IV: 148	
487	IV: 152	
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495	IV: 155	
496 *		
497	IV: 154	
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499	IV: 158 par. 1	
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502	IV: 40	
503	IV: 41	
504	IV: 44	
505	IV: 47	
506 *		
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508 *		
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510	IV: 54	
511 *		
512	IV: 56	
513	IV: 56	
514	IV: 55	
515	IV: 57	
516	IV: 57	
517	IV: 58	
518	IV: 52	
519	IV: 55	
520	IV: 47	
522 *		
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524	IV: 49	
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528	IV: 39	
529	IV: 39	
530 *		

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542	IV: 65	
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618	III: 31	
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691 *		
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718	III: 210	
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725	III: 211	
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797	V: 469	
798	I: 470	
799	V: 460, 461	
800 *		
801	V: 471	
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803 *		
804 *		
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807 *		
808 *		
809 *		
810 *		
811 *		
812 *		
813 *		
814 *		
815 *		
816 *		
817	V: 482	
818	V: 484	
819	V: 485	
820	V: 484	
821 *		
822	V: 483	
823 par. 1	V: 487	
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824 *		
825 *		
826 *		
827 *		
828 *		
829 *		
830 *		
831	III: 240	
833	III: 248	
834 par. 1	III: 250	

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835	III: 246	
836	III: 252	
837	III: 251	
838	III: 253; IV: 614, 615	
839 *		
840	III: 292	
841	III: 249	
842	III: 255	
843	III: 257, 258, 266	
844	III: 257, 259, 260, 261	
845	III: 262	
846	III: 302	
847	III: 265, 266, 267	
848 *		
849 *		
850	III: 268	
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854 *		
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856 *		
857	III: 274; IX: 20	
858	III: 275	
859 *		
860	III: 281	
861	III: 276	
862 *		
863	III: 286	
864	III: 291	
865	III: 296	
866	III: 308	
867	III: 308	
868	III: 297, 298, 299	
869	IV: 605	
870	III: 20 par. 1	
871	III: 310	
872 *		
873 par. 1	III: 287	

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875		III: 315	
876		III: 316	
877		III: 317	
878		III: 174	
879		III: 321	
880		III: 318; IV: 372	
881		III: 307	
882		III: 314	
883		III: 314	
884		III: 319	
885		III: 320	
886		III: 321	
887	par. 1	III: 322	
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888		III: 311	
889		III: 323, 324, 325, 326	
890		III: 327	
891		III: 17, 309	
892		III: 279, 281, 282, 284	
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894		III: 282	
895	par. 1	III: 282	
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896		III: 285	
897		III: 284	
898		III: 242, 243	
899		III: 244	
900		III: 293	
901		III: 294	
902		III: 304	
903		III: 295	
904		III: 294	
905		III: 328, 330	
907	par. 1	III: 332	
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908		III: 333	
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912	III: 337	
913	III: 342; IV: 562	
914	III: 352	
915	III: 342	
916	III: 343	
917	IV: 582	
918	III: 346, 348, 349	
919	III: 341, 342, 352; IV: 504	
920	IV: 585	
921	III: 350	
922 *		
923	III: 328	
924 par. 1	III: 328	
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925	III: 354	
926	III: 367	
927	III: 356	
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929	III: 359	
930	III: 367, 368	
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932	III: 363; IV: 632	
933	III: 366	
934 *		
935	III: 370; IV: 619	
936 *		
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938 *		
939 *		
940 *		
941 *		
942 *		
943 *		
944	III: 372	
945	III: 373	
946	III: 374, 375	
947	III: 376, 377, 396, 397	

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948 par. 1 *		
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949	III: 379	
949a	III: 378	
950	III: 387	
951 *		
952	III: 371	
953 *		
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954 *		
955	III: 385	
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958	III: 395	
959 *		
960 *		
961	III: 389	
962	III: 393	
963 *		
964 *		
965	III: 390	
966	III: 398, 399	
967	III: 400	
968	III: 358	
969 *		
970 *		
971 *		
972 *		
973 *		
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975 *		
976	III: 360	
977 *		
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979 *		
980	I: 30	
981 *		
981a	IV: 600, 601, 608, 613 par. 1	
981b *		
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981e	IV: 585	
981f	IV: 567	
981g	IV: 590	
981h *		
981i	IV: 570	
981j	IV: 623	
981k	IV: 513	
981l	IV: 588, 591, 592, 630	
981m	IV: 566	
981n *		
981o	IV: 552, 553	
981p	IV: 554	
981q	IV: 551	
981r	IV: 555	
981s *		
981t	IV: 557	
981u	IV: 560	
981v *		
982 *		
983	V: 3	
984	V: 9	
985	I: 6	
986	I: 113, 189; V: 28	
987 *		
988	V: 11	
989 *		
990 *		
991	V: 29	
992	V: 30	
993	V: 31	
994	V: 33	
995	V: 34	
996	V: 36	
997	V: 35	
998	V: 35	
999 *		
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1001 *		
1002	I: 114 par. 1, 193	
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1006 *		
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1008	I: 114 par. 2, 193	
1009 *		
1010 *		
1011	V: 54 par. 1, 126	
1012 *		
1013	V: 62	
1014	V: 64	
1015	V: 63	
1016	V: 63	
1017	V: 63	
1018	V: 65	
1019	V: 68	
1020	V: 67	
1021	V: 66	
1022	V: 41, 74	
1023	V: 72	
1024	V: 71	
1025	V: 383 par. 1	
1026	V: 384	
1027	V: 385	
1028	V: 73, 83	
1029	V: 85, 88	
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1031	V: 195	
1032	V: 197	
1033	V: 197	
1034	V: 199	
1035	V: 198	
1036	V: 198	
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1040a	IV: 439, 440	
1040b	IV: 420, 439, 441	
1040c *		
1040d *		
1040e *		

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1042 *		
1043	V: 104, 105	
1044	V: 106	
1045	V: 108	
1046	V: 110	
1047	V: 116, 117, 122	
1048	V: 116, 118	
1049	V: 122	
1050	V: 119, 120	
1051	V: 121	
1052	V: 123	
1053	V: 94	
1054	V: 97, 98, 99, 100	
1055	V: 100, 101 par. 1	
1056 *		
1056a *		
1056b	V: 292	
1056c	V: 297	
1057	V: 96	
1058	V: 1	
1059 *		
1060	V: 2	
1061	VIII: 24	
1062	V: 2 par. 1	
1063 *		
1064 *		
1065	V: 267, 268	
1066	V: 270	
1067 *		
1068 *		
1069	V: 262	
1070	V: 262	
1071 *		
1072 *		
1073	V: 294	
1074	V: 295	
1075	V: 295	
1076 *		
1077	V: 266, 298 par. 1, 2	
1078	V: 299	

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1080 par. 1	V: 145	
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1081	V: 147	
1082	V: 148	
1083	V: 149	
1084	V: 150	
1085	V: 152, 154	
1086	V: 151	
1087	V: 155	
1088	V: 154, 155	
1089	V: 131	
1090	V: 137, 138	
1091	V: 134	
1092	V: 140	
1093	V: 186	
1094	V: 187	
1095	V: 189, 190	
1096	V: 190	
1097	V: 190	
1098	V: 190	
1099 *		
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1106 *		
1107	V: 162	
1108	V: 163	
1109	V: 160	
1110	V: 322	
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1112	V: 164	
1113	V: 337	
1114	V: 167	
1115 par. 1, 2	V: 168	
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1117 *		

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1119 *		
1120	V: 174	
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1124	V: 182	
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1126 *		
1127	V: 183	
1128 *		
1129 *		
1130 *		
1131	V: 304	
1132 *		
1133	V: 307	
1134	V: 309	
1135	V: 308	
1136 *		
1137 *		
1138	V: 349	
1139 *		
1140	V: 216	
1141	V: 217	
1142	V: 217	
1143	V: 208	
1144	V: 212	
1145	V: 214, 433	
1146	V: 213	
1147	V: 215	
1148	V: 209	
1149	V: 211	
1150 *		
1151	V: 210	
1152	V: 218	
1153	V: 219	
1154	V: 221	
1155	V: 222 par. 1, 223, 224	
1156	V: 225	
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1158	V: 249	
1159	V: 251	
1160	V: 252	
1161	V: 253	
1162	V: 242, 245	
1163	V: 231	
1164	V: 236	
1165	V: 237, 254	
1166	V: 246	
1167	V: 247	
1168 *		
1169	V: 329	
1170 *		
1171	V: 330	
1172 *		
1173	V: 228, 229	
1174 *		
1175 *		
1176	IV: 484; V: 331	
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1178	IV: 485; V: 331	
1179	V: 332	
1180 *		
1181	V: 339, 340	
1182	V: 344	
1183	V: 341	
1184	V: 342	
1185	V: 344, 345	
1186	V: 345	
1187	V: 314, 315	
1188	V: 314	
1189	V: 318	
1190	V: 319	
1191 par. 1	V: 323	
par. 2	V: 324	
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1192	IV: 345, 395; V: 325	
1193	V: 317	
1194 *		
1195	V: 320	
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1201 *		
1202	V: 266, 347	
1202a *		
1202b	IV: 451	
1202c	IV: 452	
1202d	IV: 457	
1202e *		
1202f	IV: 453	
1202g	IV: 454	
1202h	IV: 455	
1202i	IV: 456	
1202j *		
1202k *		
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1203	VI: 1	
1204	VI: 72	
1205	VI: 12, 41	
1206 *		
1207	VI: 13, 15, 16	
1208	VI: 15; IX: 20	
1209 *		
1210	VI: 19	
1211	VI: 23	
1212	V: 79	
1213 *		
1214 *		
1215	VI: 20, 21	
1216	VI: 22	
1217	VI: 21	
1218	VI: 21	
1219	VI: 21	
1220	VI: 26, 27; IX: 20, 69 par. 1	
1221 *		
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1225 *		
1226 *		
1227	VI: 36	
1228	VI: 37	
1229 *		
1233 *		
1234 *		
1235 *		
1236 *		
1237 *		
1238 *		
1239	VI: 52	
1240	VI: 54	
1241	VI: 55	
1242	VI: 56	
1243	VI: 60, 62	
1244	VI: 63	
1245	VI: 64 par. 1, 2	
1257	II: 69	
1258	II: 69	
1259	II: 69	
1260 par. 1	II: 70	
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1261	II: 72	
1262	I: 119 par. 2; II: 73, 74 par. 2	
1263	II: 8, 73, 74 par. 1, 2	
1264	II: 75	
1265	II: 76	
1266	II: 77	
1266a *		
1266b	II: 78	
1266c	II: 80	
1266d	II: 81	
1266e	II: 82 par. 1, 2, 3, 4, 5	
1266f	II: 83	
1266g	II: 47, 84	
1266h	II: 85	
1266i	II: 86	
1266j	II: 87	

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1266l	II: 90	
1266m	II: 91	
1266n	II: 92	
1266o par. 1	II: 93	
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1266p	II: 95	
1266q *		
1266r	I: 210; II: 96	
1266s	II: 97	
1266t	II: 98	
1266u	II: 99	
1266v	II: 100	
1266w	II: 101	
1266x	II: 102	
1266y par. 1	II: 103	
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1266z	II: 105	
1267 par. 1	II: 106	
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1267a par. 1	II: 110	
par. 2	II: 109	
par. 3	II: 111	
1267b	II: 112	
1267c	II: 113	
1267d	II: 115, 116	
1268	II: 117	
1272	II: 118	
1273 par. 1	II: 119	
par. 2	II: 120	
1274 *		
1275 par. 1	II: 121	
par. 2	II: 122	
1276	II: 121	
1277	II: 123	
1278	II: 124	
1279	II: 125	
1279a	II: 132 s.-par. 2	
1280	II: 133	
1281 *		
1282	II: 133 s.-par. 4	

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1285	II: 136, 137, 138, 139	
1286 *		
1287 *		
1288 *		
1289	II: 140	
1290 par. 1	II: 141	
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1291 *		
1291a par. 1	II: 144	
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1291b	II: 147	
1291c	II: 149	
1292	II: 54, 150, 151, 152, 153, 155	
1293	II: 157	
1294	II: 148	
1296 *		
1297 *		
1303	II: 132 s.-par. 4, 158	
1304	II: 158	
1305	II: 159 par. 1	
1306 *		
1307	II: 158	
1308	II: 160	
1309 *		
1310	I: 210; II: 161	
1338	II: 162	
1339	II: 163	
1340	II: 164	
1341 *		
1342	II: 165	
1343	II: 166	
1344	II: 167	
1345	II: 168	
1346	II: 170	
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1350 *		
1351	II: 174	
1352	II: 175	
1353	II: 176	
1353a *		
1353b *		
1354	II: 177	
1355	II: 178, 179, 180, 181, 182	
1356	II: 178, 179, 180, 181, 182	
1357	II: 177, 178, 179, 180, 181, 182	
1358	II: 183	
1359	II: 185	
1360	II: 186	
1361	II: 187	
1362	II: 188	
1363	II: 189	
1364	II: 190	
1365	II: 191	
1366	II: 192	
1367	II: 193	
1368 *		
1369	II: 194	
1370	II: 195	
1371	II: 196	
1372	II: 197	
1373	II: 198	
1374 *		
1375 *		
1376	II: 199	
1377	II: 200	
1378	II: 201	
1379	II: 202	
1380 *		
1381	II: 203	
1382	II: 204	
1383	II: 205	
1384 *		
1385 *		

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1387 *		
1388 *		
1389 *		
1389a	II: 206	
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1393 *		
1394 *		
1395 *		
1396 *		
1397 *		
1398 *		
1399 *		
1400	II: 207	
1401 *		
1402 *		
1403 *		
1404 *		
1405 *		
1406	II: 208	
1407	II: 209	
1408	II: 210	
1409	II: 211	
1410 par. 1	II: 212	
par. 2	II: 213	
1411	II: 214	
1412	II: 215	
1413 *		
1415 *		
1425a	II: 216, 217, 218, 220, 221	
1425d *		
1425e	II: 222	
1425f par. 1	II: 223	
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1425h	II: 47, 226	
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1428 *		
1429 *		
1430 *		
1431 *		
1432 *		
1433 *		
1434 *		
1435 *		
1436	II: 227	
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1438	II: 47	
1439	II: 229	
1440	II: 230	
1441	II: 230	
1442	II: 231	
1443 *		
1444 *		
1445	II: 232	
1446	II: 233	
1447 *		
1448 *		
1449	II: 234	
1450 *		
1472	V: 350, 390	
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1474 *		
1475	V: 389	
1476 *		
1477	V: 358	
1478 *		
1479	V: 382, 467	
1480 *		
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1484	IV: 522; V: 352, 354	
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1487	V: 357	
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1492	V: 359, 465	
1493	V: 367, 465	
1494 *		
1495	V: 372, 379, 466	
1496 *		
1497	V: 371	
1498	V: 368	
1499	V: 369	
1500	V: 397	
1501	V: 397	
1502	V: 397	
1503	V: 370	
1504 *		
1505 *		
1506	V: 359	
1507 *		
1508 *		
1509	V: 360	
1510	V: 426	
1511 *		
1512 *		
1513 *		
1514 *		
1515 *		
1516 *		
1517 *		
1518 *		
1519 *		
1520 *		
1521 *		
1522	V: 373	
1523	V: 374	
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1525 *		
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1528 *		
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1530	V: 377	

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1532	V: 379	
1533	V: 380	
1534	V: 381	
1535 *		
1536 *		
1537 *		
1538 *		
1539 *		
1540 *		
1541 *		
1542 *		
1543 *		
1544	V: 379, 388	
1545 *		
1546 *		
1547 *		
1548 *		
1549 *		
1550 *		
1551 *		
1552 *		
1553 *		
1554 *		
1555 *		
1556 *		
1557 *		
1558 *		
1559 *		
1560 *		
1561 *		
1562 *		
1563 *		
1564 par. 1	V: 399	
par. 2	V: 408	
1565 *		
1566 *		
1567	V: 400, 402	
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1569c	V: 421	
1569d	V: 421	
1569e	V: 423 par. 1	
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1571	IV: 391; V: 430	
1571a	V: 431	
1571b	V: 431	
1571c *		
1571d	IV: 393	
1572	V: 436	
1573	IV: 389, 392, 396	
1574	V: 424	
1575 *		
1576	V: 426	
1577	V: 427	
1578	IV: 396	
1579	V: 438	
1580	V: 439	
1581	V: 440	
1582	V: 444	
1583	V: 442	
1584	V: 445	
1585 *		
1586	V: 409	
1587	V: 410	
1588 *		
1589 *		
1590 *		
1591 *		
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1596 *		
1597 *		
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1600	V: 490	
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1604	V: 494	
1605	V: 495	
1606	V: 496	
1607	V: 497	
1608	V: 498	
1609	V: 499	
1610	V: 500	
1611	V: 501	
1612	V: 502	
1613 *		
1614 *		
1615	V: 503	
1616 *		
1617	V: 504	
1618	V: 505	
1619	V: 506	
1620	V: 507	
1621	V: 508	
1622	V: 509	
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1626	V: 514	
1627	V: 515	
1628	V: 516	
1629	V: 517	
1630	V: 518	
1631	V: 519	
1632	V: 520	
1633	V: 521	
1634	V: 522	
1635	V: 523	
1636	V: 524	
1637 *		
1638 *		
1639 *		
1640 *		
1641	V: 525	
1642	V: 526	

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Articles of the Civil Code	Articles of the Draft	Others
1643	V: 527	
1644	V: 528	
1645	V: 529	
1646 par. 1	V: 530	
par. 2, 3	V: 531	
1647	V: 532	
1648	V: 533	
1649	V: 534	
1650	V: 535	
1651	V: 536	
1652	V: 537	
1653	V: 538	
1654	V: 539	
1655	V: 540	
1656	V: 541	
1657	V: 542	
1658	V: 543	
1659	V: 544	
1660	V: 545	
1661 par. 1, 2	V: 546	
par. 3, 4	V: 547	
1662	V: 548	
1663	V: 549	
1664	V: 550	
1664a par. 1, 2, 3	V: 551	
1664b	V: 552	
1664c	V: 553	
1664d	V: 554	
1664e	V: 555	
1664f par. 1	V: 556	
par. 2, 3, 4	V: 557	
1664g	V: 538	
1664h	V: 559	
1664j	V: 560	
1664k	V: 561	
1664l	V: 562	
1664m	V: 563	
1664n	V: 564	
1664o	V: 565	
1664p	V: 566	
1664q	V: 567	

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Articles of the Civil Code	Articles of the Draft	Others
1664r	V: 568	
1664t	V: 569	
1664u	V: 570	
1664v	V: 571	
1664w	V: 572	
1665	V: 573	
1665a *		
1666 *		
1667 par. 1	I: 11; V: 667	
par. 2	V: 673	
1668	V: 674, 675, 677	
1669 *		
1670 *		
1671 *		
1671a *		
1672 *		
1673	V: 609	
1674	V: 618	
1675	V: 631	
1676 *		
1677	V: 636	
1678 *		
1679	V: 638	
1680 *		
1681	V: 632	
1682a *		
1682b *		
1683 *		
1684 *		
1685 *		
1686 *		
1687	V: 694	
1688	V: 687	
1689	V: 688	
1690 *		
1691	V: 695	
1692	V: 696	
1693	V: 696	
1694	V: 697, 705	
1695 *		
1696 *		

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Articles of the Civil Code	Articles of the Draft	Others
1697 *		
1697a *		
1697b *		
1697c *		
1697d *		
1701 *		
1702 *		
1703	V: 710	
1704 *		
1705 *		
1706	IV: 522 par. l, 2; V: 711	
1707 *		
1708 *		
1709	V: 719	
1710	IV: 559; V: 714, 715	
1711	IV: 564, 565, V: 716	
1712	IV: 566	
1713	IV: 580, 591, 592, 593, 594 *in fine*, 596 V: 718, 743	
1714	IV: 597; V: 717	
1715	IV: 570; V: 721	
1716	IV: 571; V: 722	
1717	V: 723	
1718	V: 725	
1719	V: 724	
1720	V: 727	
1721 *		
1722	IV: 580, 583; V: 728, 743	
1723 *		
1724	IV: 598; V: 729	
1725	V: 730	
1726	IV: 599	
1727	V: 731	
1728	V: 733	
1729	IV: 572; V: 733	
1730	IV: 573; V: 734	
1731	V: 735	
1732 *		
1733 *		
1734 *		

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Articles of the Civil Code	Articles of the Draft	Others
1735 *		
1736 *		
1737 *		
1738 *		
1739 *		
1740 *		
1741 *		
1742 *		
1743 *		
1744 *		
1745 *		
1746 *		
1747 *		
1748 *		
1749 *		
1750 *		
1751 *		
1752 *		
1753 *		
1754 *		
1755	IV: 578, 585; V: 737	
1756	IV: 581; V: 720	
1757	V: 738	
1758	V: 740	
1759	IV: 574, 576; V: 741	
1760	IV: 584; V: 744	
1761	IV: 586; V: 745	
1762 *		
1763	V: 823	
1764 *		
1765 *		
1766 par. 1	V: 829	
par. 2	V: 830	
1767	V: 832	
1768	V: 834	
1769	V: 835	
1770 *		
1771	V: 831	
1772 *		
1773	V: 827, 833	
1774	V: 833	

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Articles of the Civil Code	Articles of the Draft	Others
1775	V: 831	
1776	V: 826	
1777	V: 824	
1778	V: 837	
1779	V: 838	
1780	V: 824	
1781	V: 826	
1782	V: 824	
1783	V: 136, 827	
1784 *		
1785 *		
1786	V: 840	
1787	V: 1172, 1174	
1788	V: 1173	
1789 *		
1790	V: 1179	
1791 *		
1792	V: 1177	
1793 *		
1794 *		
1795 *		
1796	V: 801	
1797	V: 801	
1798 *		
1799 *		
1800 *		
1801 *		
1802	V: 803	
1803	IV: 527; V: 804	
1804	V: 808	
1805 *		
1806 *		
1807	V: 812	
1808	V: 811	
1809	IV: 498; V: 813	
1810	IV: 497; V: 809	
1811 *		
1812	V: 814	
1813 *		
1814	V: 807	
1815	V: 807	

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Articles of the Civil Code	Articles of the Draft	Others
1816	V: 807	
1816a *		
1817 *		
1818	V: 816, 818	
1819 *		
1820	V: 817	
1821	V: 820	
1822 *		
1823 *		
1827 *		
1830	V: 746	
1831	V: 751	
1832 *		
1833	V: 771	
1834 *		
1834a *		
1834b *		
1835	V: 749	
1836 *		
1837 *		
1838 *		
1839 par. 1	V: 752	
par. 2	V: 753	
1840	V: 752	
1841 *		
1842	V: 754	
1843 *		
1844 *		
1845 *		
1846	V: 753	
1847	V: 755	
1848	V: 751	
1849	V: 757	
1850	V: 757	
1851	V: 757	
1852	V: 757	
1853	V: 756	
1854	V: 747, 759, 761	
1855	V: 759	
1856 *		
1857 *		

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Articles of the Civil Code	Articles of the Draft	Others
1858 *		
1859 *		
1860 *		
1861 *		
1862 *		
1863 *		
1864 *		
1865	V: 761	
1866 *		
1867	V: 760	
1868	V: 763	
1869	V: 762	
1870 *		
1871 *		
1872	V: 779, 783	
1873	V: 779, 786	
1874 *		
1875	V: 782	
1876	V: 782	
1877	V: 782	
1878	V: 782	
1879	V: 782	
1880	V: 789	
1881 *		
1882	V: 784	
1883	V: 785	
1884	V: 758, 787, 788	
1885 *		
1886 *		
1887 *		
1888 *		
1889 *		
1890 *		
1891 *		
1892	V: 764, 767, 772	
1893 *		
1894 *		
1895	V: 771	
1896 *		
1896a *		
1897	V: 774	

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Articles of the Civil Code	Articles of the Draft	Others
1898	V: 776	
1899 *		
1900	V: 775	
1901	V: 1172, 1174	
1902	V: 1187	
1903 par. 1	V: 1187	
par. 2	V: 1189, 1190	
1904 *		
1905	V: 1188	
1906 *		
1907	V: 1176	
1908	V: 1177	
1909 *		
1910	V: 1193	
1911	V: 1175	
1912	V: 1194	
1913	V: 1194	
1914 *		
1915	V: 1180	
1916 *		
1917 *		
1918	V: 1199	
1919 *		
1920 *		
1921	V: 1200	
1922	V: 1201	
1923	V: 1202	
1924	V: 1203	
1925	V: 1204	
1926	V: 1205	
1927	V: 1198	
1928 par. 1	V: 1197	
par. 2	V: 1198	
1929	V: 842	
1930 *		
1931 *		
1932	V: 845	
1933	V: 844, 847	
1934 *		
1935	V: 848	
1936 *		

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Articles of the Civil Code	Articles of the Draft	Others
1937 *		
1938	V: 849	
1939 *		
1940	V: 849	
1941	V: 852	
1942 *		
1943	V: 854	
1944 *		
1945 *		
1946 *		
1947 *		
1948	V: 855	
1949	V: 856	
1950 *		
1951 *		
1952	V: 857	
1953 s.-par. 1, 2, 3, 4	V: 858	
s.-par. 5	V: 862	
1954 *		
1955 *		
1956 *		
1957 *		
1958 *		
1959	V: 863	
1960	V: 864	
1961	V: 859	
1962 *		
1963	V: 850	
1964 *		
1965 *		
1966	IV: 296, 384	
1966a *		
1967	IV: 405	
1968 *		
1969 *		
1970	IV: 375, 384, 476	
1971 *		
1972	IV: 406 par. 1	
1973 *		

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Articles of the Civil Code	Articles of the Draft	Others
1974	IV: 338, 405, 409; V: 1178	
1975	IV: 407 par. 1	
1976	IV: 297, 408	
1977 *		
1978	IV: 313	
1979	IV: 386	
1979a	IV: 317, 322, 327	
1979b	IV: 317	
1979c par. 1	IV: 432	
par. 2	IV: 435	
1979e	IV: 317, 322, 327	
1979f	IV: 317, 318	
1979g *		
1979h *		
1979i	IV: 432	
1979j	IV: 435	
1979k *		
1980	IV: 276; V: 193	
1981	IV: 279; V: 193	
1982	IV: 280	
1983 *		
1984 *		
1985 *		
1986	IV: 469	
1987	IV: 470	
1988 par. 1	IV: 471 par. 1	
par. 2	IV: 471 par. 2	
1989 *		
1990 *		
1991 *		
1992	IV: 304	
1993 *		
1994 *		
1994a *		
1994b *		
1994c *		
1994d *		
1995 *		
1996 *		
1997 *		

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Articles of the Civil Code	Articles of the Draft	Others
1998	IV: 288 *in limine*	
1999	IV: 288	
2000	IV: 289 par. 1, 2, 3	
2001 *		
2002 *		
2003 *		
2004 *		
2005 *		
2005a *		
2006 *		
2006a *		
2007 *		
2008 *		
2009 *		
2010 *		
2011 *		
2012 *		
2013 *		
2013a *		
2013b *		
2013c *		
2013d *		
2013e *		
2013f *		
2014	III: 234	
2015 *		
2016	IV: 290, 415	
2017	IV: 297, 298, 300	
2018	IV: 291	
2019	IV: 292	
2020 *		
2021	IV: 483	
2022 *		
2023 *		
2024 *		
2025 *		
2026	IV: 367	
2027 *		
2028 *		
2030 *		
2031 *		

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Articles of the Civil Code	Articles of the Draft	Others
2032 *		
2034 par. 1	IV: 365	
par. 2	IV: 366	
par. 3	IV: 367	
2035	IV: 367	
2036	IV: 369	
2037	IV: 295	
2038	IV: 307	
2039 *		
2040	IV: 314	
2042	IV: 315; VIII: 67	
2043	IV: 306, 309, 462	
2044 par. 1	IV: 302 par. 1	
par. 2	IV: 303	
2045	IV: 371, 372	
2046	IV: 299	
2047	IV: 421	
2048	IV: 468	
2049	IV: 423	
2050 *		
2051	IV: 464	
2052	IV: 469, 470, 471 par. 1, 2	
2053	IV: 402	
2054	IV: 403	
2055	IV: 404	
2056	IV: 415	
2057	IV: 411, 412	
2058	IV: 413	
2059	IV: 416	
2060 *		
2061	IV: 446	
2062	V: 366, 460, 461	
2063 *		
2064 *		
2065 *		
2066 *		
2067 *		
2068 *		
2069 *		
2070 *		

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Articles of the Civil Code	Articles of the Draft	Others
2071 *		
2072	IV: 422	
2073	IV: 417	
2074	IV: 418	
2075	IV: 447	
2076	IV: 419	
2077	IV: 449, 450	
2078	IV: 424	
2079	IV: 420 par. 1	
2080	IV: 420 par. 1	
2081	IV: 472, 477 par. 1, 2, 478, 482	
2081a par. 1	IV: 474	
par. 2, 3 *		
par. 4	VIII: 64	
2082	VIII: 1	
2083	VIII: 89	
2084	VIII: 8	
2085	VIII: 2	
2086	VIII: 4	
2087	VIII: 30	
2088 *		
2089 *		
2090 *		
2091	VIII: 84	
2092	VIII: 31	
2093	VIII: 82	
2094 *		
2095	VIII: 83	
2096 *		
2097 *		
2098	IV: 462; VIII: 6, 46, 47, 50 par. 3	
2099 *		
2100 *		
2101	VIII: 10	
2102 *		
2103 *		
2104	III: 234	
2105 *		
2106 *		

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Articles of the Civil Code	Articles of the Draft	Others
2107 *		
2108	VIII: 6, 11	
2109	VIII: 6, 11	
2110	IV: 373, 374; VIII: 6, 46	
2111	VIII: 18	
2112	VIII: 18	
2116	VIII: 34	
2116a	VIII: 6, 12	
2116b	VIII: 6, 12	
2117 *		
2118 *		
2119 *		
2120 *		
2120a	IV: 380, 381; VIII: 6, 34	
2121	IV: 380; VIII: 6, 34	
2122	VIII: 85	
2123	VIII: 86	
2124	VIII: 85	
2125	VIII: 34, 87	
2125a	VIII: 34, 87	
2125b	VIII: 26	
2126	VIII: 13	
2127	IV: 383, 394; VIII: 59	
2129a	VIII: 15, 34	
2129b	VIII: 30	
2130	IV: 378, 421, 461; VIII: 90	
2131 par. 1	VIII: 33	
par. 2	VIII: 33, 35	
par. 3	VIII: 61, 62	
par. 4	VIII: 63	
2132	VIII: 49	
2133	VIII: 41, 42	
2134	VIII: 49, 55	
2135	VIII: 48	
2136	VIII: 37, 38 par. 2	
2137	VIII: 38 par. 1	
2138	VIII: 39	
2138a	VIII: 40	
2139	VIII: 37, 38 par. 2, 3	
2140	VIII: 43	

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Articles of the Civil Code	Articles of the Draft	Others
2141	IX: 20	
2142	IX: 20	
2143	IX: 20	
2144	IX: 20	
2145	VIII: 54	
2147 *		
2148	VIII: 94, 97	
2149	VIII: 98	
2150	VIII: 99	
2151	VIII: 102	
2152	VIII: 105	
2152a	VIII: 105	
2153	VIII: 106	
2154	VIII: 107	
2155	VIII: 109	
2156	VIII: 109	
2157	VIII: 110	
2157a	VIII: 111	
2157b *		
2158 *		
2159 *		
2160 *		
2161 *		
2161a *		
2161b *		
2161c *		
2161d	VIII: 112	
2161e *		
2161f *		
2161g	VIII: 113	
2161h	VIII: 114	
2161i	VIII: 115	
2161j *		
2161k	VIII: 116	
2161l *		
2164 *		
2164a *		
2165 *		
2166 *		
2167 *		
2168	VIII: 65, 66, 68	

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Articles of the Civil Code	Articles of the Draft	Others
2169 *		
2170 *		
2171 *		
2172	VIII: 79	
2172a *		
2173 *		
2174	VIII: 81	
2174a *		
2175 par. 1	VIII: 72 par. 1	
par. 2	VIII: 74	
par. 3	VIII: 72 par. 2	
par. 4	VIII: 73	
2176 *		
2176a *		
2176b *		
2176c *		
2177 *		
2178 *		
2179 *		
2180 *		
2181 *		
2181a *		
2182 *		
2183 par. 1	VII: 1	
par. 2	VII: 30	
par. 3	VII: 46	
2183a *		
2184	VII: 5	
2185	VII: 7	
2186	VII: 8	
2187	VII: 9	
2188	VII: 2	
2189	IX: 46	
2190	IX: 46	
2191	IX: 46	
2192	IV: 20 par. 1	
2193	IV: 23; VII: 33	
2194	IV: 20 par. 2	
2195	IV: 21 par. 1	
2196	IV: 22	
2197 *		

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Articles of the Civil Code	Articles of the Draft	Others
2198 par. 1	IV: 25 par. 1	
par. 2	IV: 26 par. 1	
par. 3	IV: 25 par. 2, 26 par. 2	
2199	IV: 24	
2200	VII: 34	
2201	VII: 31	
2202	VI: 2, 28	
2203	VII: 35, 38, 54	
2204	VII: 35	
2205	VII: 36	
2206	VII: 37	
2207	VII: 39	
2208	VII: 36	
2209 *		
2210 *		
2211 *		
2212 *		
2213 *		
2214 *		
2215 *		
2216 *		
2217 *		
2218 *		
2219 *		
2220 *		
2221 *		
2222	VII: 15	
2223	VII: 16	
2224	VII: 19, 20, 22	
2225 *		
2226	VII: 21 par. 1	
2227	VII: 24	
2228	VII: 23	
2229 *		
2230	VII: 25, 26, 27	
2231	V: 160; VII: 25, 26, 27	
2232	VII: 10, 11, 12	
2233 *		
2235 *		
2236 *		
2237	VII: 13	

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Articles of the Civil Code	Articles of the Draft	Others
2238 *		
2239	VII: 14	
2240	VII: 3, 40	
2241 *		
2242 *		
2243 *		
2244 *		
2245 *		
2246	VII: 4	
2247 *		
2248 *		
2249 *		
2250 *		
2251	VII: 41	
2252 *		
2253	VII: 42	
2254	VII: 43	
2255 *		
2256 *		
2257	VII: 44	
2258	VII: 53 par. 1	
2259 *		
2260 *		
2260a *		
2261 *		
2262 *		
2263 *		
2264	VII: 28	
2265	VII: 21 par. 1, 29	
2266	VII: 52	
2267	VII: 2	
2268	VII: 45	
2269 *		
2270 *		
2278 *		
2340 *		
2341 *		
2342 *		
2346 *		
2354 *		
2355 *		

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Articles of the Civil Code	Articles of the Draft	Others
2356 *		
2357 *		
2358 *		
2359 *		
2360 *		
2361 *		
2373 *		
2374	IV: 323	
2375 *		
2376 *		
2376a *		
2376b *		
2377 *		
2377a *		
2378 *		
2379 *		
2379a *		
2380 *		
2381 *		
2382 *		
2383 *		
2384 *		
2385 *		
2386 *		
2387 *		
2388 *		
2389	IV: 202	
2390 *		
2391	V: 581, 586	
2392	IV: 202, 203, 204; V: 205	
2393	IV: 205	
2394 *		
2395 *		
2396 *		
2397 *		
2398 *		
2399 *		
2400 *		
2401 *		
2402 *		
2403 *		

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Articles of the Civil Code	Articles of the Draft	Others
2406 *		
2407 *		
2408 *		
2409 *		
2410 *		
2411 *		
2412 *		
2413 *		
2414 *		
2415 *		
2416 *		
2417 *		
2418 *		
2419 *		
2420 *		
2421	IV: 396	
2422 *		
2423 *		
2424 *		
2425 *		
2426 *		
2427 *		
2428 *		
2429 *		
2430 *		
2431 *		
2432 *		
2433 *		
2434 *		
2435 *		
2436 *		
2437 *		
2438 *		
2439 *		
2440 *		
2441 *		
2442 *		
2443 *		
2444 *		
2445 *		
2446 *		

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Articles of the Civil Code	Articles of the Draft	Others
2447 *		
2448 *		
2449 *		
2450 *		
2451 *		
2452 *		
2453 *		
2454 *		
2455 *		
2456 *		
2457 *		
2458 *		
2459 *		
2460 *		
2461 *		
2462 *		
2463 *		
2464 *		
2465 *		
2466 *		
2467 *		
2468	V: 865	
2469	V: 866	
2470	V: 867	
2471	V: 868	
2472 par. 1	V: 869	
par. 2	V: 870	
par. 3	V: 871	
2473	V: 872	
2474	V: 873	
2475	V: 874	
2476	V: 876	
2477	V: 877	
2478	V: 878	
2479 *		
2480	V: 879	
2481	V: 880	
2482	V: 881, 882	
2483	V: 883	
2484	V: 884	
2485	V: 885	

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Articles of the Civil Code	Articles of the Draft	Others
2486	V: 886	
2487	V: 887	
2488	V: 888	
2489	V: 889	
2490 *		
2491	V: 890	
2492 *		
2493	V: 875	
2494	V: 291	
2495 *		
2496 *		
2497 *		
2498	IX: 20	
2499 *		
2500	V: 891	
2501	V: 892	
2502	V: 893	
2503	V: 894	
2504	V: 895	
2505	V: 896	
2506	V: 897	
2507	V: 898	
2508	V: 899	
2509	V: 900	
2510	V: 901	
2511	V: 902	
2512	V: 903	
2513	V: 904	
2514	V: 905	
2515	V: 906	
2516	V: 907	
2517	V: 908	
2518	V: 909	
2519	V: 910	
2520	V: 911	
2521	V: 912	
2522	V: 913	
2523	V: 914	
2524	V: 915	
2525	V: 916	
2526	V: 917	

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Articles of the Civil Code	Articles of the Draft	Others
2527	V: 918	
2528	V: 919	
2529 *		
2530 *		
2531 *		
2532	V: 921	
2533	V: 922	
2534	V: 923	
2535 par. 1, 2, 3	V: 924	
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2584	V: 979	
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2588	V: 984	
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2610	V: 1016	
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2645	V: 1071, 1072	
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2658	V: 1025	
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33 *		
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35 *		
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51 **		
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53 **		
54		〃 s. 11 to 15
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25 **		
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42 **		
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Articles of the Draft	Articles of the Civil Code	Others
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81 **		
82 **		
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96 **		
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119 **		
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121 **		
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125 *		
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155 **		
156 **		
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158 **		
159 **		
160 **		
161 **		
162 *		
163 *		
164 **		
165 **		
166 **		
167 **		
168 **		
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173 **		
174	878	
175 **		
176 *		
177	739	
178		a. 116 C.C.P.
179	740	
180	742	
181	743	
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183	743 *in fine*	
184	693 par. 1	
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193	705 *in fine*, 706	
194 **		
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199 **		
200 **		
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206 *		
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221 *		
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227 *		
228 *		
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238	752	
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241 *		
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244	899	
245 **		
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270	851 par. 1	
271	851 par. 2	
272	852	
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280 *		
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299	868 par. 4	

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300	760	
301 *		
302	846	
303	853 par. 1	
304	902	
305	893 s.-par. 2	
306	893 s.-par. 1	
307	881	
308	866, 867, 874	
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335 *		
336 *		
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338	910 par. 5	

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340	910 par. 3	
341	919	
342	913 par. 2, 915, 919 par. 1	
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344 *		
345 *		
346	918 par. 1	
347 **		
348	919 par. 1	
349	918 par. 2, 4	
350	921	
351 **		
352	914, 919 par. 5, 7	
353 *		
354	925	
355	931	
356	927	
357 *		
358	928, 968 par. 1	
359	929 par. 2, 5	
360	976	
361 **		
362 **		
363	932	
364 *		
365 *		
366	933	
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368	930	
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381 *		
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383 **		
384 **		
385	955, 956	
386 *		
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388	956	
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391 *		
392 *		
393	962	
394 **		
395	958	
396	947 par. 5	
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398	966	
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16 *		
17	586	
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19	405	
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22	2196	
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24	2199	
25 par. 1	2198 par. 1	
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26 par. 1	2198 par. 2	
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27	412	
28	2202 par. 1	
29 *		
30 *		
31 *		
32	417	
33	411 par. 1	
34	406	
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36 *		
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38 *		
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42 *		
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49	523, 524, 525	
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51 *		
52	518	
53 **		
54	510	
55	514, 519	
56	512, 513	
57	515, 516	
58	517	
59	533	
60	534, 535	
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62 *		
63	538	
64	540	
65	541, 542	
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67 *		
68	544	
69 *		
70 *		
71	583	
72	408, 413	
73 *		
74	415	
75	416	
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77	417 par. 2, 3	
78	417 par. 2, 3	
79	417 par. 4	
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81 *		
82 *		
83	418	
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88	424	
89	426	
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94	443, 446	
95	444	
96 **		
97 *		
98 *		
99	462 par. 1	
100	463	
101	483	
102 *		
103 *		
104	452	
105 *		
106	447	
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108	449	
109 **		
110	450	
111	450 par. 2	
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113 *		
114 **		
115 **		
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134 *		
135 *		
136	471	
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145	479, 482	
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154	494, 497	
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156 **		
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159 *		
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165 *		
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167	552 par. 1	
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171 *		
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174 *		
175	561	
176 *		
177	562	
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179	564	
180 **		
181 *		
182 *		
183 *		
184 **		
185 **		
186 **		
187 **		
188 **		
189 **		
190 *		
191 *		
192	710	
193	710	
194	710	
195 *		
196 **		
197	689	
198	689	
199	689 par. 1	

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202	2389, 2392 par. 1	
203	2392 par. 2	
204	2392 par. 3	
205	2393	
206	441b	
207	441c	
208	441d	
209	441e	
210	441f	
211	441g	
212	441h	
213	441i	
214	441j	
215	441k	
216	441l	
217	441m	
218	441n	
219	441o	
220	441p	
221	441q	
222	441r	
223	441s	
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231	442	
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233	442b	
234	442c	
235	442d	
236	442e	

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238	442g	
239	442h	
240	442i	
241	442j	
242	442k par. 2	
243	442l	
244	442m	
245	442n	
246	442o	
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248	567	
249	568	
250	569, 570	
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252	573 par. 1	
253 par. 1	574	
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254	574	
255	575	
256	576	
257	577 par. 1	
258	578	
259	577 par.1	
260 *		
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263	582	
264 *		
265 *		
266 *		
267 *		
268 **		
269 **		

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271 **		
272 **		
273 **		
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275 **		
276	1980	
277 par. 1		a. 553 s.-par. 3 C.C.P.
278		a. 552 par. 1 s.-par. 1, 2 C.C.P.
279	1981 *in fine*	
280	1982	
281 **		
282 **		
283 **		
284 **		
285 **		
286	419, 441	
287 *		
288 *in limine*	1998 par. 1 s.-par. 1	
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289 par. 1	2000 par. 1	
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290	2016	
291	2018	
292	2019	
293 **		
294 *		
295	2037	
296	1966 par. 2	
297	1976, 2017	
298	2017 par. 3	
299	2046	
300	2017 par. 4	
301 *		
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303	2044 par. 2	
304	1992	
305		a. 552 C.C.P.
306	2043	
307	2038	
308 *		
309	2043	
310 **		
311 **		
312 **		
313	1978	
314	2040	
315	2042	
316 *		
317	1979a par. 1, 1979b, 1979f par. 2	
318	1979f par. 2	
319 *		
320	2556	
321 **		
322	1979a, 1979e	
323	2374	
324 **		
325 **		
326 **		
327	1979a, 1979e	
328 **		
329 **		
330 par. 1 **		
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331 **		
332 **		
333 **		
334 **		
335 *		
336 **		
337 **		
338	1974	

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340 *		
341 *		
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343 *		
344 *		
345	1192	
346 **		
347 **		
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350 **		
351 **		
352 **		
353 **		
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355 **		
356 **		
357 **		
358 **		
359 **		
360 **		
361 **		
362 **		
363 **		
364 **		
365	2034 par. 1	
366	2034 par. 2	
367	2026, 2034 par. 3, 2035	
368 **		
369	2036 par. 3	
370 *		
371	2045	
372	880, 2045	
373	2110	
374	2110	
375	1970, 2082	
376 **		
377 *		

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379 *		
380	2120a, 2121	
381	2120a	
382 **		
383	2127	
384	1966, 1970	
385 **		
386	1979	
387 *		
388 **		
389	1573	
390 **		
391	1571	
392	1573	
393	1571d	
394	2127	
395	1192	
396	1573, 1578, 2421, 2711	
397 **		
398 **		
399 **		
400 *		
401 *		
402	2053	
403	2054	
404	2055	
405	1967, 1974	
406	1972	
407 par. 1	1975 par. 1	
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408	1976 par. 2	
409	1974 par. 1, 2	
410 *		
411	2057	
412	2057	
413	2058	
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416	2059	
417	2073	
418	2074	
419	2076	
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421	2047, 2130	
422	2072	
423	2049	
424	2078 par. 1	
425 **		
426 **		
427 **		
428 **		
429 **		
430 **		
431		Spec. Powers[15], s. 25
432	1979c par. 1 s.-par. 2	
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433 **		
434 **		
435	1979c par. 2, 1979j	
436 *		
437 *		
438 **		
439	1040a, 1040b	
440	1040a par. 1	
441	1040a, 1040b	
442 *		
443 *		
444 **		
445 **		
446	2061	
447	2075	
448		a. 540 C.C.P.
449	2077	
450	2077	
451	1202b s.-par. a	

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453	1202f	
454	1202g	
455	1202h	
456	1202i	
457	1202d	
458 *		
459 **		
460 **		
461	2130	
462	2043, 2098 par. 7	
463 **		
464	2051	
465		a. 717 C.C.P.
466		a. 718 C.C.P.
467 *		
468	2048	
469	1986 par. 1, 2052	
470	1987, 2052	
471 par. 1	1988 par. 1, 2052	
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472	2081	
473 *		
474	2081a par. 1	
475 **		
476	1970	
477 par. 1	2081 s.-par. 1	
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478	2081 s.-par. 3	
479 **		
480 **		
481 **		
482	2081 s.-par. 6	
483	2021	
484	1176	
485	1177, 1178	
486 **		
487 **		
488 **		

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492 *		
493 *		
494 *		
495 *		
496 **		
497	1810	
498 par. 1 *		
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499 *		
500 *		
501 *		
502 *		
503 *		
504	919 par. 6	
505 *		
506 *		
507 *		
508 **		
509 **		
510 **		
511		a. 453 C.C.P.
512 *		
513	981k	
514 *		
515 *		
516 *		
517 *		
518 **		
519 **		
520 **		
521 **		
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523 **		
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527	1803	
528	763	
529		a. 59 C.C.P.
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543 *		
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545 *		
546 *		
547 *		
548 *		
549 *		
550 **		
551	981q	
552	981o	
553	981o par. 2	
554	981p	
555	981r	
556	981s	
557	981t	
558 **		
559	1710	
560	981u	
561 **		
562	913 par. 3	
563 *		
564	1711	

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566	981m, 1712	
567	981f	
568 **		
569 **		
570	981i, 1715	
571	1716	
572	1729 par. 1	
573	1730	
574	1759	
575 **		
576	1759	
577 **		
578	1755 s.-par. 4, 5	
579 *		
580	1713, 1722	
581	1756	
582	917, 981d	
583	1722	
584	1760	
585	920, 981e, 1755 s.-par. 3	
586	1761	
587	981 *l* par. 1	
588	913 par. 4, 981m par. 1	
589 *		
590	981g	
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593	1713	
594	1713	
595 **		
596	1713 *in fine*	
597	1714	
598	1724	
599	1726	
600	981a	
601	981a	
602 *		
603 *		

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604 *		
605	869	
606 **		
607 **		
608	981a	
609 *		
610 **		
611 *		
612	981c	
613 par. 1	981a	
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614	838 par. 2	
615	838 par. 1	
616 **		
617 *		
618 *		
619	935 par. 2	
620 *		
621 **		
622 **		
623	981j par. 1	
624 **		
625 **		
626	981d	
627 *		
628 *		
629 **		
630	981*l*	
631 *		
632	932	
633 **		
634 **		
635 *		
636 **		
637 **		
638 **		
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3	983	
4 *		
5 *		
6 *		
7 *		
8 par. 1, 3 *		
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9	984	
10 **		
11	988	
12 *		
13 *		
14 *		
15 *		
16 *		
17 *		
18 **		
19 **		
20 *		
21 *		
22 *		
23 *		
24 **		
25 **		
26 **		
27 *		
28	986 par. 5	
29	991	
30	992	
31	993	
32 *		
33	994	
34	995	
35	997, 998	
36	996	
37 **		
38 *		

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40 **		
41	1022	
42 *		
43 *		
44 *		
45 **		
46 *		
47 *		
48 *		
49 *		
50 *		
51 **		
52 par. 1 *		
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53 *		
54 par. 1	1011	
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55 **		
56 *		
57 **		
58 *		
59 *		
60 *		
61 **		
62	1013	
63	1015, 1016, 1017	
64	1014	
65	1018	
66	1021	
67	1020	
68	1019	
69 *		
70 *		
71	1024	
72	1023	
73	1028, 1030	
74	1022 par. 3	
75 par. 1 *		
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76 **		
77 *		
78 *		
79	1212	
80 *		
81 *		
82 *		
83	1028	
84 *		
85	1029	
86 *		
87 *		
88	1029	
89 *		
90 *		
91 *		
92 *		
93 **		
94	1053	
95 **		
96 *	1057 par. 4	
97	1054 par. 2, 6	
98	1054 par. 3, 5	
99	1054 par. 7	
100	1054 par. 1, 5, 1055 par. 1, 2	
101 par. 1	1055	
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102 **		
103 **		
104	1043	
105	1043	
106	1044	
107 **		
108	1045 par. 2	
109 **		
110	1046	
111 **		

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Articles of the Draft	Articles of the Civil Code	Others
112 *		
113 *		
114 *		
115 **		
116	1047, 1048	
117	1047 par. 1	
118	1048 par. 2	
119	1050	
120	1050 par. 2	
121	1051	
122	1047, 1049	
123	1052	
124 **		
125 *		
126	1011	
127 *		
128 *		
129 **		
130 *		
131	1089	
132 *		
133 **		
134	1091	
135 *		
136	1783	
137	1090	
138	1090	
139 *		
140	1092	
141		Consumer[16], 〃 s. 68 par. 1, 2 〃 s. 70
142 **		
143 **		
144	1079	
145	1080 par. 1	
146 *	1080 par. 2	
147	1081	
148	1082	

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150	1084	
151	1086	
152	1085	
153	1079	
154	1085, 1088	
155	1087, 1088	
156	1103	
157	1104	
158	1105	
159 **		
160	1109, 1111, 2231	
161	1103	
162	1107	
163	1108	
164	1112	
165 **		
166 *		
167	1114	
168	1115 par. 1, 2	
169	1115 par. 3	
170	1116	
171 *		
172	1118 par. 1	
173 *		
174	1120	
175 *		
176	1118 par. 2	
177 *		
178	1100	
179	1100	
180	1101	
181 *		
182	1121, 1124 s.-par. 2	
183	1127	
184 *		
185 *		
186	1093	
187	1094	

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189	1095	
190	1095, 1096, 1097, 1098	
191 *		
192 *		
193	1980, 1981	
194 *		
195	1031	
196 **		
197	1032, 1033	
198	1035, 1036, 1038	
199	1034	
200 **		
201	1039	
202 **		
203	1040	
204 *		
205	1139	
206	1140 par. 2	
207 *		
208	1143	
209	1148	
210	1151	
211	1149	
212	1144	
213	1146	
214	1145	
215	1147	
216	1140 par. 1	
217	1141, 1142	
218	1152	
219	1153	
220 **		
221	1154	
222	1155	
223	1155 par. 1	
224	1155 par. 2	
225	1156	
226	1157 *in limine*	

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228	1173	
229	1173 *in fine*	
230 **		
231	1163	
232 **		
233 **		
234 **		
235 **		
236	1164	
237	1165 par. 2, 3	
238 **		
239 **		
240		a. 187, 188 C.C.P.
241		a. 189 C.C.P.
242	1162 par. 1	
243 *		
244 *		
245 *	1162	Deposit[17], s. 68
246	1166	
247	1167	
248		a. 191 C.C.P.
249	1158	
250 **		
251	1159	
252	1160	
253	1161	
254	1065	
255 *		
256 *		
257 *		
258 *		
259 *		
260 *		
261 *		
262	1069, 1070 *in fine*	
263 *		
264 *		
265 *		

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267	1065	
268 *		
269 **		
270	1066	
271 *		
272 **		
273 **		
274 *		
275 *		
276 **		
277 **		
278 *		
279 *		
280 *		
281 *		
282 *		
283 *		
284 *		
285 *		
286 *		
287 *		
288	1065	
289 *		
290		Charter(1), s. 49
291	2494	
292	1056b par. 4	
293 *		
294	1073	
295	1074, 1075	
296 **		
297	1056c par. 1, 2	
298 par. 1, 2	1077	
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299	1078	
300 *		
301 *		
302 *		
303 *		

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Articles of the Draft	Articles of the Civil Code	Others
304	1131	
305 *		
306 **		
307	1133	
308	1135	
309	1134	
310 **		
311 *		
312 *		
313 *		
314	1187, 1188	
315	1188	
316 **		
317	1193	
318	1189	
319	1190	
320	1195	
321	1191 par. 3	
322	1101 par. 2	
323	1191 par. 1	
324	1191 par. 2	
325	1192	
326	1196	
327 *		
328	1197	
329	1169	
330	1171	
331	1176, 1177, 1178	
332	1179 par. 1, 3	
333	1101 par. 2	
334	1198	
335	1199 par. 1	
336	1199 par. 2	
337	1113	
338	1101 par. 2	
339	1181 par. 1	
340	1181 par. 2	
341	1183	
342	1184	

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343	1101 par. 2	
344	1182, 1185 par. 2	
345	1185 par. 3, 1186	
346	1200	
347	1202	
348 *		
349	1138	
350	1472 par. 1	
351 **		
352	1484	
353 *		
354	1484 par. 2	
355 *		
356 *		
357	1487, 1488	
358	1477	
359	1491, 1492, 1506	
360	1509	
361 *		
362 *		
363 *		
364 *		
365 *		
366	2062	
367	1493	
368	1498	
369	1499	
370	1503	
371	1497	
372	1495	
373	1522, 1526	
374	1523	
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376	1529	
377	1530	
378	1531	
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381	1534 par. 2	
382	1479	
383 par. 1	1025	
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384	1026	
385	1027 par. 2	
386 *		
387	1489	
388	1544	
389	1475	
390	1472 par. 2	
391 *		
392 *		
393 *		
394 *		
395 *		
396 *		
397	1500, 1501, 1502	
398 *		
399	1564 par. 1	
400	1567	
401 **		
402	1567	
403	1568 *in limine*	
404		a. 694 C.C.P.
405	1568 *in fine*	a. 686d C.C.P.
406 **		
407 **		
408	1564 par. 2	
409	1586	
410	1587	
411	1569a	
412 **		
413	1569b par. 1	
414 **		
415 **		
416 **		
417 **		
418 **		

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Articles of the Draft	Articles of the Civil Code	Others
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420 **		
421	1569c, 1569d	
422 **		
423 par. 1	1569e s.-par. b	
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424	1574	
425 **		
426	1510, 1576	
427	1577	
428 **		
429 *		
430	1571	
431	1571a, 1571b	
432 **		
433	1145	
434 *		
435 **		
436	1572	
437 **		
438	1579	
439	1580	
440	1581	
441	710	
442	1583	
443	1485	
444	1582	
445	1584 s.-par. 1, 3	
446	755, 777, 791	
447 *		
448 *		
449 *		
450 *		
451 *		
452	763 par. 1	
453	303, 789, 792	
454	773	
455	758	
456 *		

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458 *		
459	762 par. 1	
460	796 par. 1, 2 799, 2062	
461	796 par. 1 799, 2062	
462	796 par. 2	
463 *		
464 **		
465	1491, 1492, 1493	
466	1495	
467	1479	
468	760 par. 3	
469	797	
470	798 par. 1	
471	801	
472	802	
473	784 par. 1	
474 *		
475 *		
476 *		
477 *		
478 *		
479 *		
480 *		
481 *		
482	817	
483	822	
484	818, 820	
485	819	
486	758	
487	823 par. 1	
488	823 par. 2	
489 **		
490	1600	
491	1601	
492	1602	
493	1603	

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495	1605	
496	1606	
497	1607	
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499	1609	
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501	1611	
502	1612	
503	1615	
504	1617	
505	1618	
506	1619	
507	1620	
508	1621	
509	1622	
510	1623 par. 1	
511	1623 par. 2, 3	
512	1624	
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514	1626	
515	1627	
516	1628	
517	1629	
518	1630	
519	1631	
520	1632	
521	1633	
522	1634	
523	1635	
524	1636	
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528	1644	
529	1645	
530	1646 par. 1	
531	1646 par. 2, 3	
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534	1649	
535	1650	
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541	1656	
542	1657	
543	1658	
544	1659	
545	1660	
546	1661 par. 1, 2	
547	1661 par. 3, 4	
548	1662	
549	1663	
550	1664	
551	1664a par. 1, 2, 3	
552	1664b	
553	1664c	
554	1664d	
555	1664e	
556	1664f par. 1	
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558	1664g	
559	1664h	
560	1664j	
561	1664k	
562	1664l	
563	1664m	
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565	1664o	
566	1664p	
567	1664q	
568	1664r	
569	1664t	
570	1664u	
571	1664v	

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573	1665	
574 *		
575 *		
576 *		
577 *		
578 *		
579 *		
580 *		
581	2391	
582 *		
583 *		
584 *		
585 *		
586	2391	
587 *		
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602 *		
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606 *		
607 *		
608 *		
609	1673	
610 *		

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612 *		
613 *		
614 *		
615 *		
616 *		
617 *		
618	1674	
619 *		
620 *		
621 *		
622 *		
623 *		
624 *		
625 *		
626 *		
627 *		
628 *		
629 *		
630 *		
631	1675	
632	1680	
633 *		
634 *		
635 *		
636	1677	
637 *		
638	1679	
639 **		
640 *		
641 *		
642 *		
643		Carriage, Rules[18], V, par. 2
644		V, par. 2 *in fine*
645		I
646		Carriage, Rules[18], II
647		s. 3

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654		III, 6, last paragraph
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657		IV, 2
658		IV, 3
659		IV, 4
660		IV, 5
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663		Carriage, Rules[18], VI, 1, first par. s. 5
664		s. 6
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668 *		
669 *		
670 *		
671 *		
672 *		
673	1667 par. 2	
674	1668	
675	1668	
676 **		
677	1668 par. 1, 2	
678		Labour[19], s. 36
679 *		
680 *		
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683 *		
684 *		
685 **		

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687	1688	
688	1689	
689 *		
690 *		
691 *		
692 *		
693 *		
694	1687	
695	1691	
696	1692, 1693	
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698 *		
699 *		
700 *		
701 *		
702 *		
703 *•		
704 *		
705	1694	
706 *		
707 *		
708 *		
709 *		
710	1703	
711	1706	
712 *		
713 *		
714	1710 par. 1	
715	1710 par. 2	
716	1711	
717	1714	
718	1713	
719	1709 par. 2	
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722	1716	
723	1717	
724	1719	

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Articles of the Draft	Articles of the Civil Code	Others
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728	1722	
729	1724	
730	1725	
731	1727	
732 *		
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735	1731	
736 **		
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739 *		
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742 *		
743	1722 par. 1, 1713	
744	1760	
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748 **		
749	1835	
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752	1839 par. 1, 1840	
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756	1853	
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759	1854, 1855	
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765 *		
766 **		
767	1892 par. 1, s.-par. 5, 6, 7	
768 *		
769 *		
770 **		
771	1833, 1895	
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773 **		
774	1897	
775	1900 par. 1	
776	1898	
777 *		
778 *		
779	1872, 1873	
780 **		
781 **		
782	1875, 1876, 1877, 1878, 1879	
783	1872	
784	1882	
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786	1873	
787	1884	
788	1884	
789	1880	
790 *		
791 *		
792 *		
793 *		
794 *		
795 *		
796 *		
797 *		
798 *		
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800 *		
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Articles of the Draft	Articles of the Civil Code	Others
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803	1802	
804	1803	
805 *		
806 *		
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808	1804 par. 1	
809	1810	
810 *		
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812	1807	
813	1809	
814	1812	
815 *		
816	1818	
817	1820	
818	1818	
819 *		
820	1821	
821 *		
822 *		
823	1763	
824	1777, 1780, 1782	
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826	1776, 1781	
827	1773, 1783	
828 *		
829	1766 par. 1	
830	1766 par. 2	
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833	1773, 1774	
834	1768	
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836 *		
837	1778	
838	1779	
839 **		
840	1786	

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Articles of the Draft	Articles of the Civil Code	Others
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842	1929	
843 **		
844	1933	
845	1932 par. 1	
846 *		
847	1934	
848	1935	
849	1938, 1940	
850	1963	
851 **		
852	1941	
853 *		
854	1943	
855	1948 par. 1	
856	1949 par. 1	
857	1952	
858	1953 s.-par. 1, 2, 3, 4	
859	1961 *in limine*	
860 *		
861 *		
862	1953 s.-par. 5	
863	1959	
864	1960	
865	2468	
866	2469	
867	2470	
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881	2482	
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884	2484	
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888	2488	
889	2489	
890	2491	
891	2500	
892	2501	
893	2502	
894	2503	
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896	2505	
897	2506	
898	2507	
899	2508	
900	2509	
901	2510	
902	2511	
903	2512	
904	2513	
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Articles of the Draft	Articles of the Civil Code	Others
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920 **		
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925	2535 par. 4	
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930	2540 par. 1, 2	
931	2540 par. 3	
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935	2544	
936	2545	
937 **		
938	2546 par. 1	
939	2546 par. 1	
940	2546 par. 2	
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945	2550 par. 1	
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950	2555	
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(1) *Charter of human rights and freedoms*, S.Q. 1975, c. 6.

(2) *Adoption Act*, S.Q. 1969, c. 64.

(3) *Change of Name Act*, S.Q. 1965, c. 77.

(4) *Public Health Protection Act*, S.Q. 1972, c. 42, am. by L.Q. 1975, c. 63.

(5) *Public Curatorship Act*, S.Q. 1971, c. 81.

(6) *Mental Patients Protection Act*, S.Q. 1972, c. 44.

(7) *Regulation respecting public curatorship*, O.C. 1941 May 31, 1972, O.G. June 10, 1972, p. 4939.

(8) *Companies and Partnerships Declaration Act*, R.S.Q. 1964, c. 272.

(9) *Companies Act*, R.S.Q. 1964, c. 271.

(10) *Canada Business Corporations Act*, S.C. 1974-75, c. 33.

(11) *Winding-up Act*, R.S.Q. 1964, c. 281.

(12) *Regulation respecting the solemnization of civil marriage*, O.C. 501 February 26, 1969, O.G. March 8, 1969, p. 1520.

(13) *Divorce Act*, R.S.C. 1970, D-8.

(14) *Youth Protection Act*, R.S.Q. 1964, c. 220.

(15) *Special Corporate Powers Act*, R.S.Q. 1964, c. 275.

(16) *Consumer Protection Act*, S.Q. 1971, c. 74.

(17) *Deposit Act*, R.S.Q. 1964, c. 64.

(18) *Carriage of goods by water Act*, R.S.C. 1970, c.C-15.

(19) *Labour Code*, R.S.Q. 1964, c. 141.

(20) *Notarial Act*, S.Q. 1968, c. 70.

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(21) *Cadastre Act*, R.S.Q. 1964, c. 320.

(22) *Cities and towns Act*, R.S.Q. 1964, c. 193.

(23) *Currency and exchange Act*, R.S.C. 1970, c.C-39.

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