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NOTEUP

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CIVIL CODE OF QUÉBEC

S.Q., 1991, c. 64.

updated to January 1, 2003
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PRELIMINARY PROVISION

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

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

BOOK ONE

PERSONS

TITLE ONE

ENJOYMENT AND EXERCISE OF CIVIL RIGHTS

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

1991, c. 64, s. 1.

2. Every person has a patrimony.

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

1991, c. 64, s. 2.

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

These rights are inalienable.

1991, c. 64, s. 3.

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

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

1991, c. 64, s. 4.

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

1991, c. 64, s. 5.

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

1991, c. 64, s. 6.

7. No right may be exercised with the intent of injuring another or in an excessive and unreasonable manner which is contrary to the requirements of good faith.

1991, c. 64, s. 7.

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

1991, c. 64, s. 8.

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

1991, c. 64, s. 9.

TITLE TWO

CERTAIN PERSONALITY RIGHTS

CHAPTER I

INTEGRITY OF THE PERSON

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

Except in cases provided for by law, no one may interfere with his person without his free and enlightened consent.

1991, c. 64, s. 10.

SECTION I

CARE

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

If the person concerned is incapable of giving or refusing his consent to care, a person authorized by law or by mandate given in anticipation of his incapacity may do so in his place.

1991, c. 64, s. 11.

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

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

1991, c. 64, s. 12.

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

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

1991, c. 64, s. 13.

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

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

1991, c. 64, s. 14.

15. Where it is ascertained that a person of full age is incapable of giving consent to care required by his or her state of health, consent is given by his or her mandatary, tutor or curator. If the person of full age is not so represented, consent is given by his or her married,

civil union or *de facto* spouse or, if the person has no spouse or his or her spouse is prevented from giving consent, it is given by a close relative or a person who shows a special interest in the person of full age.

1991, c. 64, s. 15; 2002, c. 6, s. 1.

16. The authorization of the court is necessary where the person who may give consent to care required by the state of health of a minor or a person of full age who is incapable of giving his consent is prevented from doing so or, without justification, refuses to do so; it is also required where a person of full age who is incapable of giving his consent categorically refuses to receive care, except in the case of hygienic care or emergency.

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

1991, c. 64, s. 16.

17. A minor fourteen years of age or over may give his consent alone to care not required by the state of his health; however, the consent of the person having parental authority or of the tutor is required if the care entails a serious risk for the health of the minor and may cause him grave and permanent effects.

1991, c. 64, s. 17.

18. Where the person is under fourteen years of age or is incapable of giving his consent, consent to care not required by his state of health is given by the person having parental authority or the mandatory, tutor or curator; the authorization of the court is also necessary if the care entails a serious risk for health or if it might cause grave and permanent effects.

1991, c. 64, s. 18.

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

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

1991, c. 64, s. 19.

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

1991, c. 64, s. 20.

21. A minor or a person of full age who is incapable of giving consent may not be submitted to an experiment if the experiment involves serious risk to his health or, where he understands the nature and consequences of the experiment, if he objects.

Moreover, a minor or a person of full age who is incapable of giving consent may be submitted to an experiment only if, where the person is the only subject of the experiment, it has the potential to produce benefit to the person's health or only if, in the case of an experiment on a group, it has the potential to produce results capable of conferring benefit to other persons in the same age category or having the same disease or handicap. Such an experiment must be part of a research project approved and monitored by an ethics committee. The competent ethics committees are formed by the Minister of Health and Social Services or designated by that Minister among existing research ethics committees; the composition and operating conditions of the committees are determined by the Minister and published in the *Gazette officielle du Québec*.

Consent to experimentation may be given, in the case of a minor, by the person having parental authority or the tutor and, in the case of a person of full age incapable of giving consent, by the mandatary, tutor or curator. Where a person of full age suddenly becomes incapable of consent and the experiment, insofar as it must be undertaken promptly after the appearance of the condition giving rise to it, does not permit, for lack of time, the designation of a legal representative, consent may be given by the person authorized to consent to any care the person requires; it is incumbent upon the competent ethics committee to determine, when examining the research project, whether the experiment meets that condition.

Care considered by the ethics committee to be innovative care required by the state of health of the person concerned does not constitute an experiment.

1991, c. 64, s. 21; 1992, c. 57, s. 716; 1998, c. 32, s. 1.

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

1991, c. 64, s. 22.

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

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

1991, c. 64, s. 23; 1998, c. 32, s. 2.

24. Consent to care not required by a person's state of health, to the alienation of a part of a

person's body, or to an experiment shall be given in writing.

It may be withdrawn at any time, even verbally.

1991, c. 64, s. 24.

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

An experiment may not give rise to any financial reward other than the payment of an indemnity as compensation for the loss and inconvenience suffered.

1991, c. 64, s. 25.

SECTION II

CONFINEMENT IN AN INSTITUTION AND PSYCHIATRIC ASSESSMENT

1997, c. 75, s. 28.

26. No person may be confined in a health or social services institution for a psychiatric assessment or following a psychiatric assessment concluding that confinement is necessary without his consent or without authorization by law or the court.

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

1991, c. 64, s. 26; 1997, c. 75, s. 29.

27. Where the court has serious reasons to believe that a person is a danger to himself or to others owing to his mental state, it may, on the application of a physician or an interested person and notwithstanding the absence of consent, order that he be confined temporarily in a health or social services institution for a psychiatric assessment. The court may also, where appropriate, authorize any other medical examination that is necessary in the circumstances. The application, if refused, may not be submitted again except where different facts are alleged.

If the danger is grave and immediate, the person may be placed under preventive confinement, without the authorization of the court, as provided for in the Act respecting the protection of persons whose mental state presents a danger to themselves or to others.

1991, c. 64, s. 27; 1997, c. 75, s. 30.

28. Where the court orders that a person be placed under confinement for a psychiatric assessment, an examination must be carried out within twenty-four hours after the person is taken in charge by the institution or, if the person was already under preventive confinement, within twenty-four hours of the court order.

If the physician who carries out the examination concludes that confinement in an institution

is necessary, a second psychiatric examination must be carried out by another physician within ninety-six hours after the person is taken in charge by the institution or, if the person was already under preventive confinement, within forty-eight hours of the court order.

If a physician reaches the conclusion that confinement is not necessary, the person must be released. If both physicians reach the conclusion that confinement is necessary, the person may be kept under confinement without his consent or the authorization of the court for no longer than forty-eight hours.

1991, c. 64, s. 28; 1997, c. 75, s. 31.

29. A psychiatric examination report must deal in particular with the necessity of confining the person in an institution if he is a danger to himself or to others owing to his mental state, with the ability of the person who has undergone the examination to care for himself or to administer his property and, where applicable, with the advisability of instituting protective supervision of the person of full age.

The report must be filed with the court within seven days of the court order. It may not be disclosed, except to the parties, without the authorization of the court.

1991, c. 64, s. 29; 1997, c. 75, s. 32.

30. Confinement in an institution following a psychiatric assessment may only be authorized by the court if both psychiatric reports conclude that confinement is necessary.

Even if that is the case, the court may not authorize confinement unless the court itself has serious reasons to believe that the person is dangerous and that the person's confinement is necessary, whatever evidence may be otherwise presented to the court and even in the absence of any contrary medical opinion.

1991, c. 64, s. 30; 1997, c. 75, s. 33; 2002, c. 19, s. 1.

30.1. A judgment authorizing confinement must also set the duration of confinement.

However, the person under confinement must be released as soon as confinement is no longer justified, even if the set period of confinement has not elapsed.

Any confinement required beyond the duration set by the judgment must be authorized by the court, in accordance with the provisions of article 30.

2002, c. 19, s. 1.

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

If the person is under fourteen years of age or is incapable of giving his consent, the information is given to the person who is authorized to give consent to care on his behalf.

1991, c. 64, s. 31.

CHAPTER II

RESPECT OF CHILDREN'S RIGHTS

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

1991, c. 64, s. 32.

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

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

1991, c. 64, s. 33; 2002, c. 19, s. 15.

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

1991, c. 64, s. 34.

CHAPTER III

RESPECT OF REPUTATION AND PRIVACY

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

No one may invade the privacy of a person without the consent of the person unless authorized by law.

1991, c. 64, s. 35; 2002, c. 19, s. 2.

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

- (1) entering or taking anything in his dwelling;
- (2) intentionally intercepting or using his private communications;
- (3) appropriating or using his image or voice while he is in private premises;
- (4) keeping his private life under observation by any means;
- (5) using his name, image, likeness or voice for a purpose other than the legitimate information of the public;

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

1991, c. 64, s. 36.

37. Every person who establishes a file on another person shall have a serious and legitimate reason for doing so. He may gather only information which is relevant to the stated objective of the file, and may not, without the consent of the person concerned or authorization by law, communicate such information to third persons or use it for purposes that are inconsistent with the purposes for which the file was established. In addition, he may not, when establishing or using the file, otherwise invade the privacy or damage the reputation of the person concerned.

1991, c. 64, s. 37.

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

1991, c. 64, s. 38.

39. A person keeping a file on a person may not deny him access to the information contained therein unless he has a serious and legitimate reason for doing so or unless the information is of a nature that may seriously prejudice a third person.

1991, c. 64, s. 39.

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

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

1991, c. 64, s. 40.

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

Similarly, if it becomes difficult to exercise those rights, the court, upon application, settles the difficulty.

1991, c. 64, s. 41.

CHAPTER IV

RESPECT OF THE BODY AFTER DEATH

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

1991, c. 64, s. 42.

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

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

1991, c. 64, s. 43.

44. A part of the body of a deceased person may be removed in the absence of knowledge or presumed knowledge of the wishes of the deceased, with the consent of the person who could give consent to care or could have given it.

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

1991, c. 64, s. 44.

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

1991, c. 64, s. 45.

46. An autopsy may be performed in the cases provided for by law or if the deceased had already given his consent thereto; it may also be performed with the consent of the person who was or would have been authorized to give his consent to care. The person requesting the autopsy or having given his consent thereto has a right to receive a copy of the report.

1991, c. 64, s. 46.

47. The court may, if circumstances justify it, order the performance of an autopsy on the deceased at the request of a physician or any interested person; in the latter case, it may restrict the release of parts of the autopsy report.

The coroner may also order the performance of an autopsy on the deceased in the cases

provided for by law.

1991, c. 64, s. 47.

48. No person may embalm, bury or cremate a body before an attestation of death has been drawn up and six hours have elapsed since that was done.

1991, c. 64, s. 48.

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

Disinterment is also permissible on the order of a coroner in accordance with the law.

1991, c. 64, s. 49.

TITLE THREE

CERTAIN PARTICULARS RELATING TO THE STATUS OF PERSONS

CHAPTER I

NAME

SECTION I

ASSIGNMENT OF NAME

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

The name includes the surname and given names.

1991, c. 64, s. 50.

51. A child is given, as his mother and father choose, one or more given names and a surname composed of not more than two of the surnames composing his parents' surnames.

1991, c. 64, s. 51; 1999, c. 47, s. 1.

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

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

1991, c. 64, s. 52.

53. If only the paternal or the maternal filiation of a child is established, he bears the surname of his father or of his mother, as the case may be, and one or more given names chosen by his father or mother.

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

1991, c. 64, s. 53.

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

If they refuse to do so, the registrar nevertheless draws up the act of birth and notifies the Attorney General of Québec. The Attorney General may bring the matter before the court within ninety days of the registration of the act to request that the surname of one of the parents be substituted for the surname chosen by the parents or that two given names in common use be substituted for the given names chosen by the parents.

Until the time for bringing the matter before the court expires or, if proceedings are brought, until the judgment acquires the authority of *res judicata*, the registrar of civil status makes a notation of the notice given to the Attorney General on every copy, certificate and attestation issued on the basis of the act of birth.

1991, c. 64, s. 54; 1999, c. 47, s. 2.

SECTION II

USE OF NAME

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

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

1991, c. 64, s. 55.

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

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

1991, c. 64, s. 56; 2002, c. 6, s. 2.

SECTION III

CHANGE OF NAME

§1. — General provision

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

1991, c. 64, s. 57.

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

58. The registrar of civil status has competence to authorize a change of name for a serious reason in every case that does not come under the jurisdiction of the court, and in particular where the name generally used does not correspond to that appearing in the act of birth, where the name is of foreign origin or too difficult to pronounce or write in its original form or where the name invites ridicule or has become infamous.

The registrar also has competence where a person applies for the addition to the surname of a part taken from the surname of the father or mother, as declared in the act of birth.

1991, c. 64, s. 58.

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

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

1991, c. 64, s. 59.

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

1991, c. 64, s. 60.

61. A person applying for a change of name states the reasons for the application and gives the names of his or her father and mother, the name of his or her married or civil union spouse and children and, where applicable, the name of the children's other parent.

The person attests under oath that the reasons stated and the information given are true, and appends all the necessary documents to the application.

1991, c. 64, s. 61; 2002, c. 6, s. 3.

62. Except for a compelling reason, no change of name of a minor child may be granted if

the tutor or the minor, if fourteen years of age or over, has not been notified of the application or objects to it.

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

1991, c. 64, s. 62.

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

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

1991, c. 64, s. 63; 1996, c. 21, s. 27.

64. All other rules respecting the procedure for a change of name, the publication of the application and decision, and the duties payable by the person making the application are determined by regulation of the Government.

1991, c. 64, s. 64.

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

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

1991, c. 64, s. 65.

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

The minor acting alone may also object to an application.

1991, c. 64, s. 66.

§4. — *Effects of a change of name*

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

Notice of the change is published in the *Gazette officielle du Québec* unless a special exemption from publication is granted by the minister responsible for civil status for reasons of general interest.

1991, c. 64, s. 67; 1996, c. 21, s. 27.

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

1991, c. 64, s. 68.

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

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

1991, c. 64, s. 69.

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

1991, c. 64, s. 70.

SECTION IV

CHANGE OF DESIGNATION OF SEX

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

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

1991, c. 64, s. 71.

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

1991, c. 64, s. 72.

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

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

1991, c. 64, s. 73.

SECTION V

REVIEW OF DECISIONS

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

1991, c. 64, s. 74.

CHAPTER II

DOMICILE AND RESIDENCE

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

1991, c. 64, s. 75.

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

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

1991, c. 64, s. 76.

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

1991, c. 64, s. 77.

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

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

1991, c. 64, s. 78.

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

1991, c. 64, s. 79.

80. An unemancipated minor is domiciled with his tutor.

Where the father and mother exercise the tutorship but have no common domicile, the minor

is presumed to be domiciled with the parent with whom he usually resides unless the court has fixed the domicile of the child elsewhere.

1991, c. 64, s. 80.

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

1991, c. 64, s. 81.

82. Married or civil union spouses may have separate domiciles without prejudice to the rules respecting their living together.

1991, c. 64, s. 82; 2002, c. 6, s. 4.

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

Election of domicile is not presumed.

1991, c. 64, s. 83.

CHAPTER III

ABSENCE AND DEATH

SECTION I

ABSENCE

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

1991, c. 64, s. 84.

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

1991, c. 64, s. 85.

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

1991, c. 64, s. 86.

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

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

1991, c. 64, s. 87.

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

1991, c. 64, s. 88; 2002, c. 6, s. 5.

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

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

1991, c. 64, s. 89; 2002, c. 6, s. 6.

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

1991, c. 64, s. 90.

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

1991, c. 64, s. 91.

SECTION II

DECLARATORY JUDGMENT OF DEATH

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

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

1991, c. 64, s. 92.

93. A declaratory judgment of death states the name and sex of the person presumed dead and, if known, the place and date of his or her birth and, if applicable, marriage or civil

union, the name of the spouse, the names of his or her father and mother as well as his or her last domicile, and the date, time and place of death.

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

1991, c. 64, s. 93; 2002, c. 6, s. 7.

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

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

1991, c. 64, s. 94.

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

1991, c. 64, s. 95.

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

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

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

1991, c. 64, s. 96; 2002, c. 6, s. 8.

SECTION III

RETURN

97. Where a person declared dead by a declaratory judgment of death returns, the effects of the judgment cease but the marriage or civil union remains dissolved.

However, if difficulties arise over custody of the children or support, they are settled as in the case of separation from bed and board or the dissolution of a civil union.

1991, c. 64, s. 97; 2002, c. 6, s. 9.

98. A person who has returned shall apply to the court for annulment of the declaratory judgment of death and rectification of the register of civil status. He may also, subject to the rights of third persons, apply to the court for the cancellation or rectification of the

particulars or entries made following the declaratory judgment of death and nullified by his return, as if they had been made without right.

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

1991, c. 64, s. 98.

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

1991, c. 64, s. 99.

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

1991, c. 64, s. 100.

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

1991, c. 64, s. 101.

SECTION IV

PROOF OF DEATH

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

1991, c. 64, s. 102.

CHAPTER IV

REGISTER AND ACTS OF CIVIL STATUS

SECTION I

OFFICER OF CIVIL STATUS

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

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

1991, c. 64, s. 103.

SECTION II

REGISTER OF CIVIL STATUS

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

1991, c. 64, s. 104.

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

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

1991, c. 64, s. 105.

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

1991, c. 64, s. 106.

SECTION III

ACTS OF CIVIL STATUS

§1. — General provisions

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

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

1991, c. 64, s. 107; 2002, c. 6, s. 10.

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

Where a name contains characters, diacritical signs or a combination of a character and a diacritical sign that are not used for the writing of French or English, the name must be transcribed into French or English, at the option of the interested person. The transcription is entered on the written copy of the register and is substituted for the original form of the name in the computerized copy of the register and on copies of acts, certificates and attestations. The original spelling of the name is preserved, subject to the modifications required by the transcription.

1991, c. 64, s. 108; 1999, c. 47, s. 3; 2002, c. 6, s. 11.

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

He dates the declaration, affixes a registration number to it and places it in the register of civil status. The declaration thereupon constitutes an act of civil status.

1991, c. 64, s. 109.

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

1991, c. 64, s. 110.

§2. — Acts of birth

111. The accoucheur draws up an attestation of birth.

An attestation states the place, date and time of birth, the sex of the child, and the name and domicile of the mother.

1991, c. 64, s. 111.

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

1991, c. 64, s. 112.

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

1991, c. 64, s. 113.

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

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

1991, c. 64, s. 114; 2002, c. 6, s. 12.

115. A declaration of birth states the name assigned to the child, the sex and the place, date and time of birth of the child, the name and domicile of the father, of the mother, and of the

witness, and the family relationship between the declarant and the child. Where the parents are of the same sex, they are designated as the mothers or fathers of the child, as the case may be.

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

1991, c. 64, s. 115; 2002, c. 19, s. 15; 2002, c. 6, s. 13.

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

A declaration states the sex and, if known, the name and the place, date and time of birth of the child. The person making a declaration shall attach a note to it relating the facts and circumstances and indicating, if known to him, the names of the father and mother.

1991, c. 64, s. 116.

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

1991, c. 64, s. 117.

§3. — *Acts of marriage*

118. The declaration of marriage is made without delay to the registrar of civil status by the person having solemnized the marriage.

1991, c. 64, s. 118; 1999, c. 47, s. 4.

119. A declaration of marriage states the name and domicile of each spouse, their places and dates of birth, the date of their marriage, and the name of the father and mother of each of them and of the witnesses.

The declaration also states the name, domicile and quality of the officiant and indicates, where applicable, his religious affiliation.

1991, c. 64, s. 119.

120. A declaration of marriage indicates, where such is the case, the fact of a dispensation from publication and, if one of the spouses is a minor, the authorizations or consents obtained.

1991, c. 64, s. 120.

121. The declaration is signed by the officiant, the spouses and the witnesses.

1991, c. 64, s. 121.

§3.1. — *Acts of civil union*

121.1. The declaration of civil union is made without delay to the registrar of civil status by the person having solemnized the civil union.

2002, c. 6, s. 14.

121.2. The declaration of civil union states the names and domicile and places and dates of birth of the spouses, the date and place of solemnization of the civil union, and the names of their fathers and mothers and witnesses. Where applicable, the declaration indicates that a dispensation from publication has been granted.

The declaration also states the name, domicile and quality of the officiant and indicates, where applicable, the officiant's religious affiliation.

2002, c. 6, s. 14.

121.3. The declaration is signed by the officiant, the spouses and the witnesses.

2002, c. 6, s. 14.

§4. — *Acts of death*

122. The physician who establishes that a death has occurred draws up an attestation of death.

He transmits a copy of the attestation to the person who is required to declare the death. Another copy is sent without delay to the registrar of civil status by the physician or by the funeral director who takes charge of the body of the deceased, together with the declaration of death, unless it cannot be transmitted immediately.

1991, c. 64, s. 122; 1999, c. 47, s. 5.

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

1991, c. 64, s. 123.

124. An attestation states the name and sex of the deceased and the place, date and time of death.

1991, c. 64, s. 124.

125. A declaration of death is made without delay to the registrar of civil status by the spouse of the deceased, a close relative or a person connected by marriage or a civil union or, failing them, by any other person able to identify the deceased. If a funeral director has taken charge of the body, he declares the time, place and mode of disposal of the body. The

declaration is made before a witness, who signs it.

1991, c. 64, s. 125; 1999, c. 47, s. 6; 2002, c. 6, s. 235.

126. A declaration of death states the name and sex, place and date of birth and, if applicable, of marriage or civil union of the deceased, the name of the spouse, the names of the father and mother and the last domicile of the deceased and the place, date and time of death as well as the time, place and mode of disposal of the body.

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

1991, c. 64, s. 126; 2002, c. 6, s. 15.

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

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

1991, c. 64, s. 127.

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

1991, c. 64, s. 128.

SECTION IV

ALTERATION OF THE REGISTER OF CIVIL STATUS

§1. — *General provision*

129. The clerk of the court that has rendered a judgment changing the name of a person or otherwise altering the status of a person or any particular in an act of civil status gives notice of the judgment to the registrar of civil status as soon as it acquires the authority of a final judgment (*res judicata*).

The notary who executes a joint declaration dissolving a civil union gives notice of the declaration without delay to the registrar of civil status.

The registrar of civil status then makes the required entries in the computerized copy of the register to ensure the publication of the register.

1991, c. 64, s. 129; 1999, c. 47, s. 7; 2002, c. 6, s. 16.

§2. — *Preparation of acts and notations*

130. Where a birth, marriage, civil union or death having occurred in Québec is not

attested or declared or is attested or declared inaccurately or late, the registrar of civil status makes a summary investigation, draws up the act of civil status on the basis of the information he obtains and inserts the act in the register of civil status.

Where a tardy declaration is made which adds to an earlier one without contradicting it, the registrar of civil status may, with the consent of the author of the earlier declaration, alter the act of civil status accordingly. However, in the case of a declaration of filiation, alteration of the act of civil status is conditional upon the consent of the child if he is 14 years of age or over and upon the absence of a bond of filiation established in favour of another person by an act, uninterrupted possession of status or a legal presumption; it is also conditional upon the absence of any objection from a third person within twenty days of the publication of a notice in accordance with the rules determined by government regulation.

1991, c. 64, s. 130; 1999, c. 47, s. 8; 2002, c. 6, s. 17.

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

1991, c. 64, s. 131.

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

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

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

1991, c. 64, s. 132.

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

1991, c. 64, s. 133.

134. The registrar of civil status makes a notation of the act of marriage or civil union in the act of birth; he also makes a notation of the act of death in the act of birth and the act of marriage or civil union.

Such notations are made in the computerized copy of the register.

1991, c. 64, s. 134; 1999, c. 47, s. 9; 2002, c. 6, s. 18.

135. The registrar of civil status, upon notification of a judgment granting a divorce, shall make a notation of the judgment in the computerized version of the acts of birth and marriage of each of the parties.

Upon notification of a notarized joint declaration or a judgment dissolving a civil union, the registrar shall make a notation of the declaration or judgment in the computerized version of the acts of birth and civil union of each of the persons concerned.

Upon notification of a judgment in nullity of marriage or civil union or annulling a declaratory judgment of death, the registrar shall cancel the act of marriage or civil union or of death, as the case may be, and make the required entries in the computerized copy of the register to ensure the coherence of the register.

1991, c. 64, s. 135; 1999, c. 47, s. 10; 2002, c. 6, s. 19.

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

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

1991, c. 64, s. 136.

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

He inserts the juridical acts made outside Québec which alter or replace acts of civil status in his possession; he then makes the required entries in the computerized copy of the register to ensure the publication of the register.

Notwithstanding their insertion in the register, juridical acts, including acts of civil status, made outside Québec retain their status as semi-authentic acts until their validity is recognized by a court in Québec. The registrar shall mention this fact when issuing copies, certificates or attestations in respect of such acts.

1991, c. 64, s. 137; 1999, c. 47, s. 11.

138. Where there is any doubt as to the validity of an act of civil status or a juridical act made outside Québec, the registrar of civil status may refuse to act until the validity of the document is recognized by a court in Québec.

1991, c. 64, s. 138.

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

court.

1991, c. 64, s. 139.

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

1991, c. 64, s. 140.

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

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

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

1991, c. 64, s. 141.

142. The registrar of civil status corrects the clerical errors in all acts. Corrections are carried over to the computerized version of the register.

1991, c. 64, s. 142; 1999, c. 47, s. 12.

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

1991, c. 64, s. 143.

SECTION V

PUBLICATION OF THE REGISTER OF CIVIL STATUS

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

Subject to article 137, copies of acts of civil status, certificates and attestations issued under this section are authentic.

1991, c. 64, s. 144.

145. Any document which reproduces in their entirety the statements of an act of civil status, including the notations thereon, as altered, but excluding notations required by regulation which are not essential to the establishment of the status of a person, is a copy of that act.

1991, c. 64, s. 145; 1999, c. 47, s. 13.

146. A certificate of civil status sets forth the person's name, sex, place and date of birth and, if the person is deceased, the place and date of death. It also sets forth, if applicable, the place and date of marriage or civil union and the name of the spouse.

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

1991, c. 64, s. 146; 2002, c. 6, s. 20.

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

1991, c. 64, s. 147.

148. The registrar of civil status issues a copy of an act or a certificate only to the persons mentioned in the act or to persons who establish their interest. The registrar may require any person applying for a copy of an act or a certificate to produce such documents and information as are necessary to verify the person's identity or interest.

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

1991, c. 64, s. 148; 2001, c. 41, s. 1; 2001, c. 70, s. 1.

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

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

1991, c. 64, s. 149.

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

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

1991, c. 64, s. 150.

SECTION VI

REGULATORY POWERS RELATING TO THE KEEPING AND PUBLICATION OF THE REGISTER OF CIVIL STATUS

151. The registrar of civil status may designate one or more members of his personnel to replace him temporarily if he is absent or unable to act. He may also delegate certain of his functions to his personnel.

Designations and delegations under the first paragraph are made in writing. They take effect upon their signature by the registrar of civil status. Acts of designation and delegation must be published in the *Gazette officielle du Québec*.

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

1991, c. 64, s. 151; 1996, c. 21, s. 27; 1999, c. 47, s. 14.

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

Within the context of an agreement concluded between the Government and a Mohawk community, the registrar of civil status may agree with the person designated by the community to a special procedure for the transmission of information concerning marriages solemnized in the territory defined in the agreement and for the transmission of declarations of birth, marriage or death concerning members of the community, as well as for entry in the register of the traditional names of the members of the community.

1991, c. 64, s. 152; 1999, c. 53, s. 19.

TITLE FOUR

CAPACITY OF PERSONS

CHAPTER I

MAJORITY AND MINORITY

SECTION I

MAJORITY

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

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

1991, c. 64, s. 153.

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

1991, c. 64, s. 154.

SECTION II

MINORITY

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

1991, c. 64, s. 155.

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

1991, c. 64, s. 156.

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

1991, c. 64, s. 157.

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

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

1991, c. 64, s. 158.

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

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

1991, c. 64, s. 159.

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

1991, c. 64, s. 160.

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

1991, c. 64, s. 161.

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

1991, c. 64, s. 162.

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

1991, c. 64, s. 163.

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

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

1991, c. 64, s. 164.

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

1991, c. 64, s. 165.

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

1991, c. 64, s. 166.

SECTION III

EMANCIPATION

§1. — *Simple emancipation*

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

Emancipation is effective from the filing of the declaration.

1991, c. 64, s. 167.

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

A minor may apply alone for his emancipation.

1991, c. 64, s. 168.

169. The tutor is accountable for his administration to the emancipated minor; he continues, however, to assist him gratuitously.

1991, c. 64, s. 169.

170. Emancipation does not put an end to minority nor does it confer all the rights resulting from majority, but it releases the minor from the obligation to be represented for the exercise of his civil rights.

1991, c. 64, s. 170.

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

1991, c. 64, s. 171.

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

1991, c. 64, s. 172.

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

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

1991, c. 64, s. 173.

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

1991, c. 64, s. 174.

§2. — Full emancipation

175. Full emancipation is obtained by marriage.

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

1991, c. 64, s. 175.

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

1991, c. 64, s. 176.

CHAPTER II

TUTORSHIP TO MINORS

SECTION I

TUTORSHIP

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

1991, c. 64, s. 177.

178. Tutorship to minors is legal or dative.

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

1991, c. 64, s. 178.

179. Tutorship is a personal office open to every natural person capable of fully exercising his civil rights who is able to assume the office.

1991, c. 64, s. 179.

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

1991, c. 64, s. 180.

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

1991, c. 64, s. 181.

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

1991, c. 64, s. 182.

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

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

1991, c. 64, s. 183.

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

1991, c. 64, s. 184.

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

1991, c. 64, s. 185.

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

1991, c. 64, s. 186.

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

1991, c. 64, s. 187.

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

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

1991, c. 64, s. 188.

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

1991, c. 64, s. 189.

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

1991, c. 64, s. 190.

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

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

1991, c. 64, s. 191.

SECTION II

LEGAL TUTORSHIP

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

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

1991, c. 64, s. 192.

193. The father and mother exercise tutorship together unless one parent is deceased or prevented from expressing his wishes or from doing so in due time.

1991, c. 64, s. 193.

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

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

1991, c. 64, s. 194.

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

1991, c. 64, s. 195.

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

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

1991, c. 64, s. 196.

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

1991, c. 64, s. 197.

198. A father or mother deprived of tutorship as a result of having been deprived of parental authority or having had the exercise of certain attributes of parental authority withdrawn may, even after dative tutorship is instituted, be reinstated as tutor once he or she again has full exercise of parental authority.

1991, c. 64, s. 198.

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

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

1991, c. 64, s. 199.

SECTION III

DATIVE TUTORSHIP

200. A father or mother may appoint a tutor to his or her minor child by will, by a mandate given in anticipation of the mandator's incapacity or by filing a declaration to that effect with the Public Curator.

1991, c. 64, s. 200; 1998, c. 51, s. 22.

201. The right to appoint a tutor belongs exclusively to the last surviving parent or to the last parent who is able to exercise tutorship, as the case may be, if that parent has retained legal tutorship to the day of his death.

Where both parents die simultaneously or lose the ability to exercise tutorship during the same event, each having designated a different person as tutor, and both persons accept the office, the court decides which person will hold it.

1991, c. 64, s. 201; 1998, c. 51, s. 23.

202. Unless the designation is contested, the tutor appointed by the father or mother assumes office upon accepting it.

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

1991, c. 64, s. 202; 1998, c. 51, s. 24.

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

1991, c. 64, s. 203.

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

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

1991, c. 64, s. 204.

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

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

1991, c. 64, s. 205.

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

1991, c. 64, s. 206; 2002, c. 6, s. 235.

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

1991, c. 64, s. 207.

SECTION IV

ADMINISTRATION OF TUTORS

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

1991, c. 64, s. 208.

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

1991, c. 64, s. 209.

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

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

1991, c. 64, s. 210.

211. A tutor may accept alone any gift in favour of his pupil. He may not accept any gift with a charge, however, without obtaining the authorization of the tutorship council.

1991, c. 64, s. 211.

212. A tutor may not transact or prosecute an appeal without the authorization of the tutorship council.

1991, c. 64, s. 212.

213. The tutor, before contracting a substantial loan in relation to the patrimony of the minor, offering property as security, alienating an important piece of family property, an immovable or an enterprise, or demanding the definitive partition of immovables held by the minor in undivided co-ownership, shall obtain the authorization of the tutorship council or, if the property or security is worth more than \$25 000, of the court, which seeks the advice of the tutorship council.

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

1991, c. 64, s. 213; 2002, c. 19, s. 15.

214. No tutor may, before obtaining an expert's appraisal, alienate property worth more

than \$25 000, except in the case of securities quoted and traded on a recognized stock exchange according to the provisions respecting presumed sound investments. A copy of the appraisal is attached to the annual management account.

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

1991, c. 64, s. 214.

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

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

1991, c. 64, s. 215.

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

1991, c. 64, s. 216.

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

1991, c. 64, s. 217.

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

1991, c. 64, s. 218.

219. The tutor to the person agrees with the tutor to property as to the amounts he requires each year to pay the expenses of the tutorship.

If the tutors do not agree on the amounts or their payment, the tutorship council or, failing that, the court decides.

1991, c. 64, s. 219.

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

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

1991, c. 64, s. 220.

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

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

1991, c. 64, s. 221.

SECTION V

TUTORSHIP COUNCIL

§1. — Role and establishment of the council

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

1991, c. 64, s. 222; 2002, c. 6, s. 235.

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

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

1991, c. 64, s. 223.

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

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

1991, c. 64, s. 224; 2002, c. 6, s. 235.

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

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

1991, c. 64, s. 225; 2002, c. 6, s. 235.

226. The father and mother of the minor and, if they have a known residence in Québec, his other ascendants and his brothers and sisters of full age shall be called to the meeting of relatives, persons connected by marriage or a civil union and friends called to establish a tutorship council.

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

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

1991, c. 64, s. 226; 2002, c. 6, s. 235.

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

1991, c. 64, s. 227.

228. The meeting appoints the three members of the council and designates two alternates, giving consideration so far as possible to representation of the maternal and paternal lines.

It also appoints a secretary, who may or may not be a member of the council, responsible for taking and keeping the minutes of the deliberations; it fixes the remuneration of the secretary, where applicable.

The tutor may not be a member of the tutorship council.

1991, c. 64, s. 228.

229. Vacancies are filled by the council by selecting a designated alternate in the line where the vacancy occurred. If there is no alternate, the council selects a relative or a person connected by marriage or a civil union in the same line or, if none, a relative or a person connected by marriage or a civil union in the other line or a friend.

1991, c. 64, s. 229; 2002, c. 6, s. 235.

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

1991, c. 64, s. 230.

231. The court may, on application or of its own motion, rule that the tutorship council will be composed of only one person designated by it where, owing to the dispersal or indifference of the family members or their inability, for serious reasons, to attend, or to the personal or family situation of the minor, it would be inadvisable to establish a council composed of three persons.

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

The court may exempt the person making the application from first calling a meeting of relatives, persons connected by marriage or a civil union and friends if it is shown that sufficient effort has been made to call the meeting, but that such effort has been in vain.

1991, c. 64, s. 231; 2002, c. 6, s. 235.

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

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

1991, c. 64, s. 232.

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

233. The tutorship council gives advice and makes decisions in every case provided for by law.

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

1991, c. 64, s. 233.

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

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

1991, c. 64, s. 234.

235. Whenever a minor has any interest to discuss judicially with his tutor, the council

causes a tutor ad hoc to be appointed to him.

1991, c. 64, s. 235.

236. The council ascertains that the tutor makes an inventory of the property of the minor and that he furnishes and maintains a security.

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

1991, c. 64, s. 236.

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

1991, c. 64, s. 237.

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

1991, c. 64, s. 238.

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

1991, c. 64, s. 239.

SECTION VI

SUPERVISION OF TUTORSHIPS

§1. — *Inventory*

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

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

1991, c. 64, s. 240.

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

1991, c. 64, s. 241.

§2. — *Security*

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

The tutorship is liable for the costs of the security.

1991, c. 64, s. 242.

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

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

1991, c. 64, s. 243.

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

1991, c. 64, s. 244.

245. Where it is advisable to release the security, the tutorship council or the minor, once he attains full age, may do so and, at the cost of the tutorship, apply for cancellation of the registration, if any. Notice of the cancellation is given to the Public Curator.

1991, c. 64, s. 245.

§3. — *Reports and accounts*

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

The tutor to property renders an annual account to the tutor to the person.

1991, c. 64, s. 246.

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

1991, c. 64, s. 247.

248. Every agreement between the tutor and the minor who has come of age relating to the administration or the account is null unless it is preceded by a detailed rendering of account and the delivery of the related vouchers.

1991, c. 64, s. 248.

249. The Public Curator examines the annual accounts of management and the final account of the tutor. He also ascertains that the security is maintained.

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

1991, c. 64, s. 249.

SECTION VII

REPLACEMENT OF TUTOR AND END OF TUTORSHIP

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

1991, c. 64, s. 250.

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

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

1991, c. 64, s. 251.

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

1991, c. 64, s. 252.

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

1991, c. 64, s. 253.

254. Every judgment terminating the duties of a tutor contains the reasons for replacing him and designates the new tutor.

1991, c. 64, s. 254.

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

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

1991, c. 64, s. 255.

CHAPTER III

PROTECTIVE SUPERVISION OF PERSONS OF FULL AGE

SECTION I

GENERAL PROVISIONS

256. Protective supervision of a person of full age is established in his interest and is intended to ensure the protection of his person, the administration of his patrimony and, generally, the exercise of his civil rights.

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

1991, c. 64, s. 256.

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

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

1991, c. 64, s. 257.

258. A tutor or curator is appointed to represent, or an adviser to assist, a person of full age who is incapable of caring for himself or herself or of administering property by reason, in particular, of illness, deficiency or debility due to age which impairs the person's mental faculties or physical ability to express his or her will.

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

1991, c. 64, s. 258; 2002, c. 6, s. 21.

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

1991, c. 64, s. 259.

260. The curator or the tutor to a protected person of full age is responsible for his custody and maintenance; he is also responsible for ensuring the moral and material well-being of

the protected person, taking into account his condition, needs and faculties and the other aspects of his situation.

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

1991, c. 64, s. 260; 2002, c. 19, s. 15.

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

1991, c. 64, s. 261.

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

1991, c. 64, s. 262.

263. The Public Curator does not have custody of the protected person of full age to whom he is appointed tutor or curator unless, where no other person can assume it, the court entrusts it to him. He is nevertheless, in all cases, responsible for protection of the person of full age.

The person to whom custody is entrusted, however, has the power of a tutor or curator to give consent to the care required by the state of health of the person of full age, except the care which the Public Curator elects to provide.

1991, c. 64, s. 263.

264. The Public Curator acting as tutor or curator to a protected person of full age may delegate the exercise of certain functions related to tutorship or curatorship to a person he designates after ascertaining, where the person of full age is being treated in a health or social services establishment, that the designated person is not an employee of the establishment and has no duties therewith. He may, however, where circumstances warrant, disregard this restriction if the employee of the establishment is the spouse or a close relative of the person of full age or if the function delegated is the management, according to the Public Curator's instructions, of the monthly personal expense allowance granted to the person.

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

1991, c. 64, s. 264; 1999, c. 30, s. 21.

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

1991, c. 64, s. 265.

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

Thus, the spouse and descendants in the first degree of the person of full age shall be called to the meeting of relatives, persons connected by marriage or a civil union and friends along with the persons to be called to it pursuant to article 226.

1991, c. 64, s. 266; 1998, c. 51, s. 25; 2002, c. 6, s. 235.

267. Where the Public Curator requires the institution or review of protective supervision and shows that sufficient effort has been made to call the meeting of relatives, persons connected by marriage or a civil union and friends but that such effort has been in vain, the court may proceed without the meeting being held.

1991, c. 64, s. 267; 2002, c. 6, s. 235.

SECTION II

INSTITUTION OF PROTECTIVE SUPERVISION

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

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

1991, c. 64, s. 268.

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

1991, c. 64, s. 269; 2002, c. 6, s. 235.

270. Where a person of full age receiving care or services from a health or social services establishment requires to be assisted or represented in the exercise of his civil rights by reason of his isolation, the foreseeable duration of his incapacity, the nature or state of his affairs or because no mandatary already designated by him gives him adequate assistance or representation, the executive director of the health or social services institution reports that fact to the Public Curator, transmits a copy of his report to the person of full age and informs a close relative of that person.

Such a report contains, in particular, the medical and psychosocial assessment prepared by the person who examined the person of full age; it deals with the nature and degree of the incapacity of the person of full age, the extent of his needs and the other circumstances of his situation and with the advisability of instituting protective supervision for him. It also

sets out the names, if known, of the persons qualified to apply for the institution of protective supervision.

1991, c. 64, s. 270.

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

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

1991, c. 64, s. 271.

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

Even before the proceedings, the Court may, if protective supervision is about to be instituted and it is necessary to act in order to save the person of full age from serious harm, designate the Public Curator or another person provisionally to ensure protection of the person of full age or to represent him in the exercise of his civil rights.

1991, c. 64, s. 272; 1999, c. 30, s. 22.

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

If no mandate has been given by the person of full age or by the court under article 444, the rules provided in respect of the management of the business of another are observed and the Public Curator and any other person who is qualified to apply for the institution of protective supervision may, in an emergency or even before proceedings if an application for the institution of protective supervision is about to be made, perform the acts required to preserve the patrimony.

1991, c. 64, s. 273.

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

1991, c. 64, s. 274.

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

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

1991, c. 64, s. 275.

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

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

1991, c. 64, s. 276.

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

1991, c. 64, s. 277.

278. Unless the court fixes an earlier date, the protective supervision is reviewed every three years in the case of a tutorship or where an adviser has been appointed or every five years in the case of a curatorship.

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

1991, c. 64, s. 278.

279. The executive director of the health or social services institution providing care or services to the person of full age shall, if the incapacity that justified protective supervision ceases, attest that fact in a report which he files in the office of the court. Such a report includes the medical and psychosocial assessment.

1991, c. 64, s. 279.

280. When a report on the review of protective supervision has been filed, the clerk notifies the persons qualified to intervene in the application for protective supervision. If no

objection is made within thirty days after the report is filed, protective supervision is modified or terminated without other formality. An attestation is drawn up by the clerk and transmitted without delay to the person of full age himself and to the Public Curator.

1991, c. 64, s. 280; 2002, c. 19, s. 15.

SECTION III

CURATORSHIP TO PERSONS OF FULL AGE

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

The court then appoints a curator.

1991, c. 64, s. 281; 2002, c. 19, s. 15.

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

1991, c. 64, s. 282.

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

1991, c. 64, s. 283.

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

1991, c. 64, s. 284.

SECTION IV

TUTORSHIP TO PERSONS OF FULL AGE

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

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

1991, c. 64, s. 285.

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

1991, c. 64, s. 286.

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

1991, c. 64, s. 287.

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

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

1991, c. 64, s. 288.

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

1991, c. 64, s. 289.

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

1991, c. 64, s. 290.

SECTION V

ADVISERS TO PERSONS OF FULL AGE

291. The court appoints an adviser to a person of full age who, although generally and habitually capable of caring for himself and of administering his property, requires, for certain acts or for a certain time, to be assisted or advised in the administration of his property.

1991, c. 64, s. 291.

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

1991, c. 64, s. 292.

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

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

1991, c. 64, s. 293.

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

1991, c. 64, s. 294.

SECTION VI

END OF PROTECTIVE SUPERVISION

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

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

1991, c. 64, s. 295.

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

1991, c. 64, s. 296.

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

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

1991, c. 64, s. 297.

TITLE FIVE

LEGAL PERSONS

CHAPTER I

JURIDICAL PERSONALITY

SECTION I

CONSTITUTION AND KINDS OF LEGAL PERSONS

298. Legal persons are endowed with juridical personality.

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

1991, c. 64, s. 298.

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

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

1991, c. 64, s. 299.

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

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

1991, c. 64, s. 300.

SECTION II

EFFECTS OF JURIDICAL PERSONALITY

301. Legal persons have full enjoyment of civil rights.

1991, c. 64, s. 301.

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

1991, c. 64, s. 302.

303. Legal persons have capacity to exercise all their rights, and the provisions of this

Code respecting the exercise of civil rights by natural persons are applicable to them, adapted as required.

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

1991, c. 64, s. 303.

304. Legal persons may not exercise tutorship or curatorship to the person.

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

1991, c. 64, s. 304.

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

It shall be assigned a name which conforms to law and which includes, where required by law, an expression that clearly indicates the juridical form assumed by the legal person.

1991, c. 64, s. 305.

306. A legal person may engage in an activity or identify itself under a name other than its own name. It shall file a notice to that effect with the Inspector General of Financial Institutions or, if the legal person is a syndicate of co-owners, apply for the registration of such a notice in the land register.

1991, c. 64, s. 306; 2000, c. 42, s. 1.

307. The domicile of a legal person is at the place and address of its head office.

1991, c. 64, s. 307.

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

1991, c. 64, s. 308.

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

1991, c. 64, s. 309.

310. The functioning, the administration of the patrimony and the activities of a legal person are regulated by law, the constituting act and the by-laws; to the extent permitted by law, they may also be regulated by a unanimous agreement of the members.

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

1991, c. 64, s. 310.

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

1991, c. 64, s. 311.

312. A legal person is represented by its senior officers, who bind it to the extent of the powers vested in them by law, the constituting act or the by-laws.

1991, c. 64, s. 321.

313. The by-laws of a legal person set out the contractual relations existing between the legal person and its members.

1991, c. 64, s. 313.

314. A legal person exists in perpetuity unless otherwise provided by law or its constituting act.

1991, c. 64, s. 314.

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

1991, c. 64, s. 315.

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

1991, c. 64, s. 316.

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

1991, c. 64, s. 317.

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

1991, c. 64, s. 318.

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

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

1991, c. 64, s. 319.

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

1991, c. 64, s. 320.

SECTION III

OBLIGATIONS AND DISQUALIFICATION OF DIRECTORS

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

1991, c. 64, s. 321.

322. A director shall act with prudence and diligence.

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

1991, c. 64, s. 322; 2002, c. 19, s. 15.

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

1991, c. 64, s. 323.

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

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

1991, c. 64, s. 324.

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

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

1991, c. 64, s. 325.

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

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

1991, c. 64, s. 326.

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

However, minors and persons of full age under tutorship may be directors of associations constituted as legal persons that do not aim to make pecuniary profits and whose objects concern them.

1991, c. 64, s. 327.

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

1991, c. 64, s. 328.

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

1991, c. 64, s. 329.

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

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

1991, c. 64, s. 330.

SECTION IV

JUDICIAL ATTRIBUTION OF PERSONALITY

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

Prior consent to the application shall be obtained from the authority that should originally have had control over the constitution of the person.

1991, c. 64, s. 331.

332. Any interested person may intervene in the proceedings or contest a judgment which, in fraud of his rights, has attributed juridical personality.

1991, c. 64, s. 332; 2002, c. 19, s. 15.

333. The judgment confers juridical personality from the date it indicates. It nowise alters the rights and obligations existing on that date.

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

1991, c. 64, s. 333.

CHAPTER II

PROVISIONS APPLICABLE TO CERTAIN LEGAL PERSONS

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

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

1991, c. 64, s. 334.

SECTION I

FUNCTIONAL STRUCTURE OF LEGAL PERSONS

§1. — Administration

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

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

1991, c. 64, s. 335.

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

1991, c. 64, s. 336.

337. Every director is, with the other directors, liable for the decisions taken by the board of directors unless he requested that his dissent be recorded in the minutes of proceedings or the equivalent.

However, a director who was absent from a meeting of the board is presumed not to have approved the decisions taken at that meeting.

1991, c. 64, s. 337.

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

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

1991, c. 64, s. 338.

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

1991, c. 64, s. 339.

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

1991, c. 64, s. 340.

341. Where the board is prevented from acting according to majority rule or in the specified proportion owing to the incapacity or systematic opposition of some directors, the others may act alone for conservatory acts; they may also, with the authorization of the court, act alone for acts requiring immediate action.

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

1991, c. 64, s. 341.

342. The board of directors keeps the list of members and the books and registers necessary for the proper functioning of the legal person.

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

1991, c. 64, s. 342.

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

The designated person may issue copies of the documents deposited with him; until proof to the contrary, the copies are proof of their contents without any requirement to prove the signature affixed to them or the authority of the author.

1991, c. 64, s. 343.

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

1991, c. 64, s. 344.

§2. — *General meeting*

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

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

1991, c. 64, s. 345.

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

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

1991, c. 64, s. 346.

347. The notice convening the annual general meeting is accompanied with the balance

sheet, the statement of income for the preceding financial period and a statement of debts and claims.

1991, c. 64, s. 347.

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

1991, c. 64, s. 348.

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

1991, c. 64, s. 349.

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

1991, c. 64, s. 350.

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

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

1991, c. 64, s. 351.

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

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

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

1991, c. 64, s. 352; 2002, c. 19, s. 15.

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

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

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

1991, c. 64, s. 353.

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

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

1991, c. 64, s. 354.

SECTION II

DISSOLUTION AND LIQUIDATION OF LEGAL PERSONS

355. A legal person is dissolved by the annulment of its constituting act or for any other cause provided for by the constituting act or by law.

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

1991, c. 64, s. 355.

356. A legal person may also be dissolved by consent of not less than two-thirds of the votes given at a general meeting convened expressly for that purpose.

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

1991, c. 64, s. 356.

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

1991, c. 64, s. 357.

358. The directors shall file a notice of the dissolution with the Inspector General of Financial Institutions or, if the legal person is a syndicate of co-owners, apply for the registration of such a notice in the land register, and appoint a liquidator, according to the by-laws, who shall proceed immediately with the liquidation.

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

1991, c. 64, s. 358; 2000, c. 42, s. 2.

359. Notice of the appointment of a liquidator, as also of any revocation, is filed in the

same place as the notice of dissolution. The appointment and revocation may be set up against third persons from the filing of the notice.

1991, c. 64, s. 359.

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

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

1991, c. 64, s. 360.

361. The liquidator first repays the debts, then effects the reimbursement of the capital contributions.

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

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

1991, c. 64, s. 361.

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

He disposes of them thereafter as he sees fit.

1991, c. 64, s. 362.

363. Unless the liquidator obtains an extension from the court, the Public Curator undertakes or continues a liquidation that is not terminated within five years from the filing of the notice of dissolution.

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

1991, c. 64, s. 363.

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

1991, c. 64, s. 364.

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NOTEUP

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CIVIL CODE OF QUÉBEC

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BOOK TWO

THE FAMILY

TITLE ONE

MARRIAGE

CHAPTER I

MARRIAGE AND SOLEMNIZATION OF MARRIAGE

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

1991, c. 64, s. 365; 2002, c. 6, s. 22.

366. Every clerk or deputy clerk of the Superior Court designated by the Minister of Justice, every notary authorized by law to execute notarized acts and, within the territory defined in the instrument of designation, any other person designated by the Minister of Justice among such officials as mayors, members of municipal or borough councils and municipal officers is competent to solemnize marriage.

In addition, every minister of religion authorized to solemnize marriage by the religious society to which he belongs is competent to do so, provided that he is resident in Québec, that he carries on the whole or part of his ministry in Québec, that the existence, rites and ceremonies of his confession are of a permanent nature, that he solemnizes marriages in places which conform to those rites or to the rules prescribed by the Minister of Justice and that he is authorized by the minister responsible for civil status.

Any minister of religion not resident but living temporarily in Québec may also be

authorized to solemnize marriage in Québec for such time as the minister responsible for civil status determines.

In the territory defined in an agreement concluded between the Government and a Mohawk community, the persons designated by the Minister of Justice and the community are also competent to solemnize marriages.

1991, c. 64, s. 366; 1996, c. 21, s. 28; 1999, c. 53, s. 20; 2002, c. 6, s. 23.

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

1991, c. 64, s. 367.

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

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

1991, c. 64, s. 368.

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

1991, c. 64, s. 369.

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

1991, c. 64, s. 370.

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

1991, c. 64, s. 371.

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

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

1991, c. 64, s. 372.

373. Before solemnizing a marriage, the officiant ascertains the identity of the intended spouses, compliance with the conditions for the formation of the marriage and observance of the formalities prescribed by law. More particularly, the officiant ascertains that the intended

spouses are free from any previous bond of marriage or civil union and, in the case of minors, that the person having parental authority or, if applicable, the tutor has consented to the marriage.

1991, c. 64, s. 373; 2002, c. 6, s. 24.

374. In the presence of the witnesses, the officiant reads articles 392 to 396 to the intended spouses.

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

1991, c. 64, s. 374.

375. The officiant draws up the declaration of marriage and sends it without delay to the registrar of civil status.

1991, c. 64, s. 375; 1999, c. 47, s. 15.

376. Clerks and deputy clerks, notaries and persons designated by the Minister of Justice solemnize marriages according to the rules prescribed by the Minister of Justice.

Clerks and deputy clerks collect the duties fixed by regulation of the Government from the intended spouses, on behalf of the Minister of Finance.

Notaries and designated persons collect the agreed fees from the intended spouses. However, mayors, other members of municipal or borough councils and municipal officers collect the duties fixed by municipal by-law from the intended spouses, on behalf of the municipality; such duties must be in keeping with the minimum and maximum amounts fixed by regulation of the Government.

1991, c. 64, s. 376; 2002, c. 6, s. 25.

377. The minister responsible for civil status and the Minister of Justice keep the registrar of civil status informed of the authorizations, designations and revocations they give, make or take part in with respect to officiants competent to solemnize marriages, so that appropriate entries and corrections may be made in a register.

For the same purposes, the secretary of the Ordre des notaires du Québec maintains, and communicates to the registrar of civil status, an updated list of the notaries who are competent to solemnize marriages, specifying the date on which each notary became so competent and, if known, the date on which the notary will cease to be so competent.

If an officiant is unable to act or dies, the religious society, the clerk of the Superior Court or the secretary of the Ordre des notaires du Québec, as the case may be, is responsible for informing the registrar of civil status so that the appropriate corrections may be made in the register.

1991, c. 64, s. 377; 1996, c. 21, s. 29; 2002, c. 6, s. 26.

CHAPTER II

PROOF OF MARRIAGE

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

1991, c. 64, s. 378.

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

1991, c. 64, s. 379.

CHAPTER III

NULLITY OF MARRIAGE

380. A marriage which is not solemnized according to the prescriptions of this Title and the necessary conditions for its formation may be declared null upon the application of any interested person, although the court may decide according to the circumstances.

No action lies after the lapse of three years from the solemnization, except where public order is concerned.

1991, c. 64, s. 380; 2002, c. 19, s. 15.

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

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

1991, c. 64, s. 381.

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

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

1991, c. 64, s. 382.

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

1991, c. 64, s. 383.

384. If only one spouse was in good faith, that spouse may either take back his or her

property or apply for the liquidation of the patrimonial rights resulting to him or her from the marriage.

1991, c. 64, s. 384.

385. Subject to article 386, spouses in good faith are entitled to the gifts made to them in consideration of marriage.

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

1991, c. 64, s. 385.

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

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

1991, c. 64, s. 386.

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

1991, c. 64, s. 387.

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

1991, c. 64, s. 388.

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

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

1991, c. 64, s. 389.

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

1991, c. 64, s. 390.

CHAPTER IV

EFFECTS OF MARRIAGE

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

1991, c. 64, s. 391.

SECTION I

RIGHTS AND DUTIES OF SPOUSES

392. The spouses have the same rights and obligations in marriage.

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

They are bound to live together.

1991, c. 64, s. 392.

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

1991, c. 64, s. 393.

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

1991, c. 64, s. 394.

395. The spouses choose the family residence together.

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

1991, c. 64, s. 395.

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

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

1991, c. 64, s. 396.

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

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

1991, c. 64, s. 397.

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

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

1991, c. 64, s. 398.

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

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

1991, c. 64, s. 399.

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

1991, c. 64, s. 400.

SECTION II

FAMILY RESIDENCE

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

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

1991, c. 64, s. 401.

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

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

1991, c. 64, s. 402.

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

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

1991, c. 64, s. 403.

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

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

1991, c. 64, s. 404.

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

Where a declaration of family residence was previously registered against the immovable, a spouse not having consented to the deed of alienation may require to be granted a lease by the acquirer of the premises already occupied as a dwelling under the conditions governing the lease of a dwelling; on the same condition, a spouse having neither consented to nor ratified the act of lease may apply to have it annulled.

1991, c. 64, s. 405.

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

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

1991, c. 64, s. 406.

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

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

1991, c. 64, s. 407.

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

1991, c. 64, s. 408.

409. In the event of separation from bed and board, divorce or nullity of a marriage, the

court may, upon the application of either spouse, award to the spouse of the lessee the lease of the family residence.

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

1991, c. 64, s. 409.

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

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

The user is exempted from furnishing security and from making an inventory of the property unless the court decides otherwise.

1991, c. 64, s. 410.

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

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

1991, c. 64, s. 411.

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

1991, c. 64, s. 412.

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

1991, c. 64, s. 413.

SECTION III

FAMILY PATRIMONY

§1. — *Establishment of patrimony*

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

1991, c. 64, s. 414.

415. The family patrimony is composed of the following property owned by one or the other of the spouses: the residences of the family or the rights which confer use of them, the movable property with which they are furnished or decorated and which serves for the use of the household, the motor vehicles used for family travel and the benefits accrued during the marriage under a retirement plan. The payment of contributions into a pension plan entails an accrual of benefits under the pension plan; so does the accumulation of service recognized for the purposes of a pension plan.

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

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

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

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

- a plan governed by the Act respecting Supplemental Pension Plans or that would be governed thereby if it applied where the spouse works;
- a retirement plan governed by a similar Act of a legislative jurisdiction other than the Parliament of Québec;
- a plan established by an Act of the Parliament of Québec or of another legislative jurisdiction;
- a retirement-savings plan;
- any other retirement-savings instrument, including an annuity contract, into which sums from any of such plans have been transferred.

1991, c. 64, s. 415; 2002, c. 19, s. 3.

§2. — *Partition of patrimony*

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

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

resumed living together is substituted for the date of the marriage for the purposes of this section.

1991, c. 64, s. 416.

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

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

1991, c. 64, s. 417.

418. Once the net value of the family patrimony has been established, a deduction is made from it of the net value, at the time of the marriage, of the property then owned by one of the spouses that is included in the family patrimony; similarly, a deduction is made from it of the net value of a contribution made by one of the spouses during the marriage for the acquisition or improvement of property included in the family patrimony, where the contribution was made out of property devolved by succession or gift, or its reinvestment.

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

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

1991, c. 64, s. 418.

419. Partition of the family patrimony is effected by giving in payment or by payment in money.

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

1991, c. 64, s. 419.

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

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

1991, c. 64, s. 420.

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

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

1991, c. 64, s. 421.

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

1991, c. 64, s. 422.

423. The spouses may not, by way of their marriage contract or otherwise, renounce their rights in the family patrimony.

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

Renunciation shall be entered in the register of personal and movable real rights. Failing entry within a period of one year from the time when the right to partition arose, the renouncing spouse is deemed to have accepted.

1991, c. 64, s. 423; 1992, c. 57, s. 716.

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

1991, c. 64, s. 424.

425. The partition of the earnings registered in the name of each spouse pursuant to the Act

respecting the Québec Pension Plan or to a similar plan is effected by the body responsible for administering the plan, in accordance with that Act or the Act applicable to that plan, unless the latter Act provides no rules for partition.

1991, c. 64, s. 425.

426. The partition of the accrued benefits of one of the spouses under a pension plan governed or established by an Act is effected according to the rules of valuation and devolution contained in that Act or, where there are no such rules, according to the rules determined by the court seized of the application.

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

Between the spouses or for their benefit, and notwithstanding any provision to the contrary, such benefits and benefits accrued under any other pension plan are transferable and seizable for partition of the family patrimony.

1991, c. 64, s. 426; 2002, c. 19, s. 4.

SECTION IV

COMPENSATORY ALLOWANCE

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

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

1991, c. 64, s. 427.

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

1991, c. 64, s. 428.

429. Where a compensatory allowance becomes payable, the court, failing agreement between the parties, fixes the amount thereof. It may also, where applicable, fix the terms and conditions of payment and order that the allowance be paid in cash or by instalments or

that it be paid by the awarding of rights in certain property.

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

1991, c. 64, s. 429.

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

1991, c. 64, s. 430.

CHAPTER V

MATRIMONIAL REGIMES

SECTION I

GENERAL PROVISIONS

§1. — Choice of matrimonial regime

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

1991, c. 64, s. 431.

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

1991, c. 64, s. 432.

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

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

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

1991, c. 64, s. 433.

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

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

The minor may apply for the authorization alone.

1991, c. 64, s. 434.

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

1991, c. 64, s. 435.

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

No agreement made in violation of this article may be impugned except by the person of full age himself, his tutor or his adviser, as the case may be, nor except in the year immediately following the solemnization of the marriage or the day of the act changing the matrimonial agreements.

1991, c. 64, s. 436.

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

1991, c. 64, s. 437.

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

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

If a creditor sustains damage as the result of a change to a marriage contract, he may, within one year of becoming aware of the change, obtain a declaration that it may not be set up against him.

1991, c. 64, s. 438.

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

1991, c. 64, s. 439.

440. Marriage contracts shall be established by a notarial act *en minute*, on pain of absolute

nullity.

1991, c. 64, s. 440.

441. The notary receiving a marriage contract changing a previous contract shall immediately notify the depositary of the original marriage contract and the depositary of any contract changing the matrimonial regime. The depositary is bound to enter the change on the original and on any copy he may make of it, indicating the date of the contract, the name of the notary and the number of his minute.

1991, c. 64, s. 441.

442. A notice of every marriage contract shall be entered in the register of personal and movable real rights at the requisition of the receiving notary.

1991, c. 64, s. 442.

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

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

1991, c. 64, s. 443.

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

The court fixes the terms and conditions of exercise of the powers conferred.

1991, c. 64, s. 444.

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

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

1991, c. 64, s. 445.

446. Either spouse, having administered the property of the other, is accountable even for the fruits and revenues consumed before receiving a demand to render an account.

1991, c. 64, s. 446.

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

As regards movable property, however, each spouse is deemed, in respect of third parties in

good faith, to have power to enter alone into acts by onerous title for which the consent of the other spouse would be necessary.

1991, c. 64, s. 447.

SECTION II

PARTNERSHIP OF ACQUESTS

§1. — Composition of the partnership of acquests

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

1991, c. 64, s. 448.

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

- (1) the proceeds of that spouse's work during the regime;
- (2) the fruits and income due or collected from all that spouse's private property or acquests during the regime.

1991, c. 64, s. 449.

450. The private property of each spouse consists of

- (1) property owned or possessed by that spouse when the regime comes into effect;
- (2) property which devolves to that spouse during the regime by succession or gift, and the fruits and income derived from it if the testator or donor has so provided;
- (3) property acquired by that spouse to replace private property and any insurance indemnity relating thereto;
- (4) the rights or benefits devolved to that spouse as a subrogated holder or as a specified beneficiary under a contract or plan of retirement, other annuity or insurance of persons;
- (5) that spouse's clothing and personal papers, wedding ring, decorations and diplomas;
- (6) the instruments required for that spouse's occupation, saving compensation where applicable.

1991, c. 64, s. 450.

451. Property acquired with private property and acquests is also private property, subject to compensation, if the value of the private property used is greater than one-half of the total

cost of acquisition of the property. Otherwise, it is an acquet subject to compensation.

The same rule applies to life insurance, retirement pensions and other annuities. The total cost is the aggregate of the premiums or sums paid, except in term insurance where it is the amount of the latest premium.

1991, c. 64, s. 451.

452. Where, during the regime, a spouse who is already privately an undivided co-owner of a property acquires another part of it, this acquired part is also that spouse's private property, saving compensation where applicable.

However, if the value of the acquets used to acquire that part is equal to or greater than one-half of the total value of the property of which the spouse has become the owner, this property becomes an acquet, subject to compensation.

1991, c. 64, s. 452.

453. The right of a spouse to support, to a disability allowance or to any other benefit of the same nature remains the private property of that spouse; however, all pecuniary benefits derived from these are acquets, if they fall due or are collected during the regime or are payable to that spouse's heirs and successors at death.

No compensation is due by reason of any amount or premium paid with the acquets or the private property to acquire the support, allowance or other benefits.

1991, c. 64, s. 453.

454. The right to claim damages and the compensation received for moral or corporal injury are also the private property of the spouse.

The same rule applies to the right and the compensation arising from an insurance contract or any other indemnification scheme, but no compensation is payable in respect of the premiums or amounts paid with the acquets.

1991, c. 64, s. 454.

455. Property acquired as an accessory of or an annex to private property, and any construction, work or plantation on or in an immovable which is private property, remain private, saving compensation, if need be.

However, if the accessory or annex was acquired, or the construction, work or plantation made, from acquets, and if its value is equal to or greater than that of the private property, the whole becomes an acquet subject to compensation.

1991, c. 64, s. 455.

456. Securities acquired by the effect of a declaration of dividends on securities that are the private property of either spouse remain that spouse's private property, saving

compensation.

Securities acquired by the effect of the exercise of a subscription right, a pre-emptive right or any other similar right conferred on either spouse by securities that are that spouse's private property likewise remain so, saving compensation, if need be.

Redemption premiums and prepaid premiums on securities that are the private property of either spouse remain that spouse's private property without compensation.

1991, c. 64, s. 456.

457. Income derived from the operation of an enterprise that is the private property of either spouse remains that spouse's private property, subject to compensation, if it is reinvested in the enterprise.

No compensation is due, however, if the investment was necessary in order to maintain the income of the enterprise.

1991, c. 64, s. 457.

458. Intellectual and industrial property rights are private property, but all fruits and income arising from them and collected or fallen due during the regime are acquests.

1991, c. 64, s. 458.

459. All property is presumed to constitute an acquest, both between the spouses and with respect to third persons, unless it is established that it is private property.

1991, c. 64, s. 459.

460. Any property that a spouse is unable to prove to be an exclusively private property or acquest is presumed to be held by both spouses in undivided co-ownership, one-half by each.

1991, c. 64, s. 460.

§2. — Administration of property and liability for debts

461. Each spouse has the administration, enjoyment and free disposal of his or her private property and acquests.

1991, c. 64, s. 461.

462. Neither spouse may, however, without the consent of the other, dispose of acquests *inter vivos* by gratuitous title, with the exception of property of small value or customary presents.

A spouse may be authorized by the court to enter into the act alone, however, if consent cannot be obtained for any reason or if refusal is not justified in the interest of the family.

1991, c. 64, s. 462.

463. The restriction to the right to dispose of acquests does not limit the right of either spouse to designate a third person as a beneficiary or subrogated holder of an insurance of persons, a retirement pension or any other annuity, subject to the application of the rules respecting the family patrimony.

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

1991, c. 64, s. 463.

464. The spouses, individually, are liable on both their private property and their acquests for all debts incurred by them before or during the marriage.

While the regime lasts, neither spouse is liable for the debts incurred by the other, subject to articles 397 and 398.

1991, c. 64, s. 464.

§3. — *Dissolution and liquidation of the regime*

465. The regime of partnership of acquests is dissolved by

- (1) the death of one of the spouses;
- (2) a conventional change of regime during the marriage;
- (3) a judgment of divorce, separation from bed and board, or separation as to property;
- (4) the absence of one of the spouses in the cases provided for by law;
- (5) the nullity of the marriage if, nevertheless, the marriage produces effects.

The effects of the dissolution are produced immediately, except in the cases of subparagraphs 3 and 5, where they are retroactive, between the spouses, to the day of the application.

1991, c. 64, s. 465.

466. In any case of dissolution of a regime, the court may, upon the application of either spouse or of the latter's successors, decide that, in the mutual relations of the spouses, the effects of the dissolution are retroactive to the date when they ceased to live together.

1991, c. 64, s. 466.

467. Each spouse retains his or her private property after the regime is dissolved.

One spouse may accept or renounce the partition of the other spouse's acquests, notwithstanding any agreement to the contrary.

1991, c. 64, s. 467.

468. Acceptance may be either express or tacit.

No spouse who has interfered in the management of the acquests of the other spouse after the regime is dissolved may receive the share of the acquests of the other spouse to which he or she is entitled unless the other spouse has accepted the partition of the acquests of the spouse who interfered.

Acts of simple administration do not constitute interference.

1991, c. 64, s. 468.

469. Renunciation shall be made by notarial act *en minute* or by a judicial declaration which is recorded.

Renunciation shall be entered in the register of personal and movable real rights; failing entry within one year from the date of the dissolution, the spouse is deemed to have accepted.

1991, c. 64, s. 469.

470. If either spouse renounces partition, the share of the other's acquests to which he or she would have been entitled remains vested in the other.

However, the creditors of the spouse who renounces partition to the prejudice of their rights may apply to the court for a declaration that the renunciation may not be set up against them, and accept the share of the acquests of their debtor's spouse in his or her place and stead.

In that case, their acceptance has effect only in their favour and only to the extent of the amount of their claims; it is not valid in favour of the renouncing spouse.

1991, c. 64, s. 470.

471. A spouse who has misappropriated or concealed acquests, wasted acquests or administered them in bad faith forfeits his or her share of the acquests of the other spouse.

1991, c. 64, s. 471.

472. Acceptance and renunciation are irrevocable. Renunciation may be annulled, however, by reason of lesion or any other cause of nullity of contracts.

1991, c. 64, s. 472.

473. When the regime is dissolved by death and the surviving spouse has accepted the

partition of the acquests of the deceased spouse, the heirs of the deceased spouse may accept or renounce the partition of the surviving spouse's acquests, and, excepting preferential awards which only the surviving spouse is entitled to receive, the provisions on the dissolution and liquidation of the regime apply to them.

If one of the heirs accepts partition and the others renounce it, the heir who accepts may not take more than the portion of the acquests that he would have had if all had accepted.

Renunciation by the surviving spouse may be set up against the creditors of the deceased spouse.

1991, c. 64, s. 473.

474. When a spouse dies while still entitled to renounce partition, the heirs have a further period of one year from the date of death in which to have their renunciation entered.

1991, c. 64, s. 474.

475. When the partition of a spouse's acquests is accepted, the property of the patrimony of that spouse is first divided into two masses, one comprising the private property and the other the acquests.

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

The compensation is equal to the enrichment enjoyed by one mass to the detriment of the other.

1991, c. 64, s. 475.

476. Property susceptible of compensation is estimated according to its condition at the time of dissolution of the regime and to its value at the time of liquidation.

The enrichment is valued as on the day the regime is dissolved; however, when the property acquired or improved was alienated during the regime, the enrichment is valued as on the day of the alienation.

1991, c. 64, s. 476.

477. No compensation is due by reason of expenses necessary or useful for the maintenance or preservation of the property.

1991, c. 64, s. 477.

478. Unpaid debts incurred for the benefit of the private property give rise to compensation as if they had already been paid with the acquests.

1991, c. 64, s. 478.

479. Payment with the acquests of any fine imposed by law gives rise to compensation.

1991, c. 64, s. 479.

480. If the statement shows a balance in favour of the mass of acquests, the spouse who holds the patrimony makes a return to that mass for partition, either by taking less, or in value, or with his or her private property.

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

1991, c. 64, s. 480.

481. Once the settlement of compensation has been effected, the net value of the mass of acquests is established and evenly divided between the spouses. The spouse who holds the patrimony may pay the portion due to the other spouse by paying him or her in money or by giving in payment.

1991, c. 64, s. 481.

482. If the dissolution of the regime results from the death or absence of the spouse who holds the patrimony, the other spouse may require to be given in payment, on condition of payment of any balance, in cash or by instalments, the family residence and the movable property serving for the use of the household or any other family property to the extent that they were acquests or property forming part of the family patrimony.

If there is no agreement on the payment of the balance, the court fixes the terms and conditions of guarantee and payment.

1991, c. 64, s. 482.

483. If the parties do not agree on the valuation of the property, it is valued by experts designated by the parties or, failing them, the court.

1991, c. 64, s. 483.

484. Dissolution of the regime does not prejudice the rights, before the partition, of former creditors against the whole of their debtor's patrimony.

After the partition, former creditors may only pursue payment of their claims against the debtor spouse. However, if the claims were not taken into account when the partition was made, they may, after discussion of the property of their debtor, pursue the other spouse. Each spouse then preserves a remedy against the other for the amounts he or she would have been entitled to if the claims had been paid before the partition.

In no case may the spouse of the debtor spouse be called upon to pay a greater amount than the portion of the acquests he or she received from the latter.

1991, c. 64, s. 484.

SECTION III

SEPARATION AS TO PROPERTY

§1. — *Conventional separation as to property*

485. The regime of conventional separation as to property is established by a simple declaration to this effect in the marriage contract.

1991, c. 64, s. 485.

486. Under the regime of separation as to property, the spouses, individually, have the administration, enjoyment and free disposal of all their property.

1991, c. 64, s. 486.

487. Property over which the spouses are unable to establish their exclusive right of ownership is presumed to be held by both in undivided co-ownership, one-half by each.

1991, c. 64, s. 487.

§2. — *Judicial separation as to property*

488. Either spouse may obtain separation as to property when the application of the rules of the matrimonial regime appears to be contrary to the interests of that spouse or of the family.

1991, c. 64, s. 488.

489. Separation as to property judicially obtained entails dissolution of the matrimonial regime and puts the spouses in the situation of those who are conventionally separate as to property.

Between spouses, the effects of the separation are retroactive to the day of the application unless the court makes them retroactive to the date on which the spouses ceased to live together.

1991, c. 64, s. 489.

490. Creditors of the spouses may not apply for separation as to property, but may intervene in the action.

They may also institute proceedings against separation as to property pronounced or executed in fraud of their rights.

1991, c. 64, s. 490.

491. Dissolution of the matrimonial regime effected by separation as to property does not give rise to the rights of survivorship, unless otherwise stipulated in the marriage contract.

1991, c. 64, s. 491.

SECTION IV

COMMUNITY REGIMES

492. Where the spouses elect for a community matrimonial regime and it is necessary to supplement the provisions of the agreement, reference shall be made to the rules respecting partnership of acquests, adapted as required.

Spouses married under the former regime of legal community may invoke the rules of dissolution and liquidation of the regime of partnership of acquests where these are not inconsistent with their matrimonial regime.

1991, c. 64, s. 492.

CHAPTER VI

SEPARATION FROM BED AND BOARD

SECTION I

GROUND FOR SEPARATION FROM BED AND BOARD

493. Separation from bed and board is granted when the will to live together is gravely undermined.

1991, c. 64, s. 493.

494. The will to live together is gravely undermined particularly

- (1) where proof of an accumulation of facts that make further living together hardly tolerable is adduced by the spouses or either of them;
- (2) where, at the time of the application, the spouses are living apart;
- (3) where either spouse has seriously failed to perform an obligation resulting from the marriage; however, the spouse may not invoke his or her own failure.

1991, c. 64, s. 494.

495. If the spouses submit to the approval of the court a draft agreement settling the consequences of their separation from bed and board, they may apply for separation without disclosing the ground.

The court then grants the separation if it is satisfied that the spouses truly consent and that the agreement sufficiently preserves the interests of each of them and of the children.

1991, c. 64, s. 495.

SECTION II

PROCEEDINGS FOR SEPARATION FROM BED AND BOARD

§1. — *General provision*

496. It comes within the role of the court to counsel and to foster the conciliation of the spouses, and to see to the interests of the children and the respect of their rights, at all stages of the proceedings for separation from bed and board.

1991, c. 64, s. 496.

§2. — *Application and proof*

497. An application for separation from bed and board may be presented by both spouses or either of them.

1991, c. 64, s. 497.

498. Proof that further living together is hardly tolerable for the spouses may result from the admission of one party but the court may require additional evidence.

1991, c. 64, s. 498.

§3. — *Provisional measures*

499. An application for separation from bed and board releases the spouses from the obligation to live together.

1991, c. 64, s. 499.

500. The court may order either spouse to leave the family residence during the proceedings.

It may also authorize either spouse to retain temporarily certain movable property which until that time had served for common use.

1991, c. 64, s. 500.

501. The court may decide as to the custody and education of the children.

It fixes the contribution payable by each spouse to the maintenance of the children during the proceedings.

1991, c. 64, s. 501.

502. The court may order either spouse to pay support to the other, and a provisional sum to cover the costs of the proceedings.

1991, c. 64, s. 502.

503. Provisional measures may be reviewed whenever warranted by any new fact.

1991, c. 64, s. 503.

§4. — *Adjournments and reconciliation*

504. The court may adjourn the hearing of the application for separation from bed and board if it considers that adjournment can foster the reconciliation of the spouses or avoid serious prejudice to either spouse or to any of their children.

The court may also adjourn the hearing if it considers that the spouses are able to settle the consequences of their separation from bed and board and to make agreements in that respect which the court will be able to take into account.

1991, c. 64, s. 504.

505. Reconciliation between the spouses occurring after the application is presented terminates the proceedings.

Either spouse may nevertheless present a new application on any ground arising after the reconciliation and, in that case, may invoke the previous grounds in support of the application.

1991, c. 64, s. 505.

506. Resumption of cohabitation for less than ninety days does not by itself create a presumption of reconciliation.

1991, c. 64, s. 506.

SECTION III

EFFECTS BETWEEN SPOUSES OF SEPARATION FROM BED AND BOARD

507. Separation from bed and board releases the spouses from the obligation to live together; it does not break the bond of marriage.

1991, c. 64, s. 507.

508. Separation from bed and board carries with it separation as to property, where applicable.

Between spouses, the effects of separation as to property are produced from the day of the application for separation from bed and board, unless the court makes them retroactive to the date on which the spouses ceased to live together.

1991, c. 64, s. 508.

509. Separation from bed and board does not immediately give rise to rights of survivorship, unless otherwise stipulated in the marriage contract.

1991, c. 64, s. 509.

510. Separation from bed and board does not entail the lapse of gifts made to the spouses in consideration of marriage.

However, the court, when granting a separation, may declare the gifts lapsed or reduce them, or order the payment of gifts *inter vivos* deferred for such time as it may fix, taking the circumstances of the parties into account.

1991, c. 64, s. 510.

511. The court, when granting a separation from bed and board or subsequently, may order either spouse to pay support to the other.

1991, c. 64, s. 511.

512. In any decision relating to the effects of separation from bed and board in respect of the spouses, the court takes their circumstances into account; it considers, among other things, their needs and means, the agreements made between them, their age and state of health, their family obligations, their chances of finding employment, their existing and foreseeable patrimonial situation, evaluating both their capital and their income, and, as the case may be, the time needed by the creditor of support to acquire sufficient autonomy.

1991, c. 64, s. 512.

SECTION IV

EFFECTS OF SEPARATION FROM BED AND BOARD ON CHILDREN

513. Separation from bed and board does not deprive the children of the advantages secured to them by law or by the marriage contract.

The rights and duties of fathers and mothers towards their children are unaffected by separation from bed and board.

1991, c. 64, s. 513.

514. The court, in granting separation from bed and board or subsequently, decides as to the custody, maintenance and education of the children, in their interest and in the respect of

their rights, taking into account the agreements made between the spouses, where such is the case.

1991, c. 64, s. 514.

SECTION V

END OF SEPARATION FROM BED AND BOARD

515. Separation from bed and board is terminated upon the spouses' voluntarily resuming living together.

Separation as to property remains unless the spouses elect another matrimonial regime by marriage contract.

1991, c. 64, s. 515.

CHAPTER VII

DISSOLUTION OF MARRIAGE

SECTION I

GENERAL PROVISIONS

516. Marriage is dissolved by the death of either spouse or by divorce.

1991, c. 64, s. 516.

517. Divorce is granted in accordance with the Divorce Act of Canada. The rules governing proceedings for separation from bed and board enacted by this Code and the rules of the Code of Civil Procedure apply to such applications to the extent that they are consistent with the Divorce Act of Canada.

1991, c. 64, s. 517.

SECTION II

EFFECTS OF DIVORCE

518. Divorce carries with it the dissolution of the matrimonial regime.

The effects of the dissolution of the regime are produced between the spouses from the day the application is presented, unless the court makes them retroactive to the date on which the spouses ceased to live together.

1991, c. 64, s. 518.

519. Divorce entails the lapse of gifts *mortis causa* made by one spouse to the other in

consideration of marriage.

1991, c. 64, s. 519.

520. Divorce does not entail the lapse of other gifts *mortis causa* or gifts *inter vivos* made to the spouses in consideration of marriage.

The court may, however, when granting a divorce, declare such gifts lapsed or reduce them, or order the payment of gifts *inter vivos* deferred for such time as it may fix.

1991, c. 64, s. 520.

521. Divorce has the same effects in respect of children as separation from bed and board.

1991, c. 64, s. 521.

TITLE ONE.1

CIVIL UNION

CHAPTER I

FORMATION OF CIVIL UNION

521.1. A civil union is a commitment by two persons eighteen years of age or over who express their free and enlightened consent to live together and to uphold the rights and obligations that derive from that status.

A civil union may only be contracted between persons who are free from any previous bond of marriage or civil union and who in relation to each other are neither an ascendant or a descendant, nor a brother or a sister.

2002, c. 6, s. 27.

521.2. A civil union must be contracted openly before an officiant competent to solemnize marriages and in the presence of two witnesses.

No minister of religion may be compelled to solemnize a civil union to which there is an impediment according to the minister's religion and the discipline of the religious society to which he or she belongs.

2002, c. 6, s. 27.

521.3. Before proceeding with a civil union, the officiant ascertains the identity of the intended spouses as well as compliance with the conditions for the formation of a civil union and observance of the formalities prescribed by law.

The solemnization of a civil union is subject to the same rules, with the necessary modifications, as are applicable to the solemnization of a marriage, including the rules

relating to prior publication.

2002, c. 6, s. 27.

521.4. Any interested person may oppose a civil union between persons incapable of contracting a civil union.

A minor may act alone to oppose a civil union.

2002, c. 6, s. 27.

521.5. A civil union is proved by an act of civil union, except where another mode of proof is authorized by law.

Possession of the status of civil union spouses compensates for a defect of form in the act of civil union.

2002, c. 6, s. 27.

CHAPTER II

CIVIL EFFECTS OF CIVIL UNION

521.6. The spouses in a civil union have the same rights and obligations.

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

They are bound to live together.

The effects of the civil union as regards the direction of the family, the exercise of parental authority, contribution towards expenses, the family residence, the family patrimony and the compensatory allowance are the same as the effects of marriage, with the necessary modifications.

Whatever their civil union regime, the spouses may not derogate from the provisions of this article.

2002, c. 6, s. 27.

521.7. A civil union creates a family connection between each spouse and the relatives of his or her spouse.

2002, c. 6, s. 27.

521.8. A civil union regime may be created by and any kind of stipulation may be made in a civil union contract, subject to the imperative provisions of law and public order.

Spouses who, before the solemnization of their civil union, have not so fixed their civil union regime are subject to the regime of partnership of acquests.

Civil union regimes, whether legal or conventional, and civil union contracts are subject to the same rules as are applicable to matrimonial regimes and marriage contracts, with the necessary modifications.

2002, c. 6, s. 27.

521.9. If spouses cannot agree as to the exercise of their rights and the performance of their duties, they or either of them may apply to the court, which will decide in the best interests of the family after fostering conciliation of the parties.

2002, c. 6, s. 27.

CHAPTER III

NULLITY OF CIVIL UNION

521.10. A civil union which is not contracted in accordance with the prescriptions of this Title may be declared null upon the application of any interested person, although the court may decide according to the circumstances.

No action lies after the lapse of three years from the solemnization, except where public order is concerned.

2002, c. 6, s. 27.

521.11. The nullity of a civil union entails the same effects as the nullity of a marriage.

2002, c. 6, s. 27.

CHAPTER IV

dissolution of civil union

521.12. A civil union is dissolved by the death of either spouse. It is also dissolved by a court judgment or by a notarized joint declaration where the spouses' will to live together is irretrievably undermined.

2002, c. 6, s. 27.

521.13. The spouses may consent, by way of a joint declaration, to the dissolution of the civil union provided they settle all the consequences of the dissolution in an agreement.

The declaration and the agreement must be executed before a notary and recorded in notarial acts *en minute*.

The notary may not execute the declaration before the agreement is recorded in a notarized transaction contract. The notary must inform the spouses beforehand of the consequences of the dissolution and make sure that they truly consent to the dissolution and that the

agreement is not contrary to imperative provisions of law or public order. If appropriate, the notary may provide information to the spouses on any available conciliation services.

2002, c. 6, s. 27.

521.14. The transaction contract specifies the date on which the net value of the family patrimony is established. The date may not be earlier than the date of the joint procedure for the dissolution of the civil union or the date on which the spouses ceased living together, or later than the date of the execution of the contract before a notary.

2002, c. 6, s. 27.

521.15. The joint declaration dissolving a civil union states the names and domicile of the spouses, their places and dates of birth and the place and date of solemnization of the union ; it also indicates the places and dates of execution of the transaction contract and of the declaration as well as the minute number given to each of those acts.

2002, c. 6, s. 27.

521.16. From the date of their execution before a notary and without further formality, the joint declaration dissolving the civil union and the transaction contract have the effects of a judgment dissolving a civil union.

In addition to being notified to the registrar of civil status, the notarized declaration must be sent to the depositary of the original civil union contract and to the depositary of any contract modifying the civil union regime established by the original contract. The depositary is bound to make a reference to the joint declaration of dissolution on the original of the contract and on any copy issued, specifying the date of the declaration, the minute number and the name and address of the notary who executed the declaration. The notarized declaration and transaction must also be sent to the Régie des rentes du Québec.

A notice of the notarized declaration must be entered in the register of personal and movable real rights on the application of the executing notary.

2002, c. 6, s. 27.

521.17. In the absence of a joint declaration dissolving the civil union executed before a notary or where the interests of the common children of the spouses are at stake, the dissolution of the union must be pronounced by the court.

The court must ascertain that the spouses' will to live together is irretrievably undermined, foster conciliation and see to the interests of the children and the protection of their rights. During the proceeding, the court may determine provisional measures, as in the case of separation from bed and board.

Upon or after pronouncing the dissolution, the court may order one of the spouses to pay support to the other, decide as to the custody, maintenance and education of the children, in their best interests and with due regard for their rights, and in keeping with any agreements made between the spouses.

2002, c. 6, s. 27.

521.18. The dissolution of a civil union does not deprive the children of the advantages secured to them by law or by the civil union contract.

The rights and obligations of parents towards their children are unaffected by the dissolution of the union.

2002, c. 6, s. 27.

521.19. The dissolution of a civil union entails the dissolution of the civil union regime. Between the spouses, the effects of the dissolution of the regime are retroactive to the day of the death, the day of execution of the joint declaration of dissolution before a notary or, if the spouses so stipulated in the notarized transaction, the day on which the net value of the family patrimony is established. If the dissolution is pronounced by the court, its effects are retroactive to the day of the application to the court, unless the court makes them retroactive to the day on which the spouses ceased living together.

Dissolution, otherwise than by death, entails the lapse of gifts *mortis causa* made by one spouse to the other in consideration of the civil union. It does not entail the lapse of other gifts *mortis causa* or of gifts *inter vivos* between the spouses in consideration of the union, except that the court may, upon pronouncing the dissolution, declare such gifts lapsed or reduce them, or order the payment of gifts *inter vivos* deferred for such time as it may fix.

2002, c. 6, s. 27.

TITLE TWO

FILIATION

GENERAL PROVISION

522. All children whose filiation is established have the same rights and obligations, regardless of their circumstances of birth.

1991, c. 64, s. 522.

CHAPTER I

FILIATION BY BLOOD

SECTION I

PROOF OF FILIATION

§1. — Title and possession of status

523. Paternal filiation and maternal filiation are proved by the act of birth, regardless of the

circumstances of the child's birth.

In the absence of an act of birth, uninterrupted possession of status is sufficient.

1991, c. 64, s. 523.

524. Uninterrupted possession of status is established by an adequate combination of facts which indicate the relationship of filiation between the child and the persons of whom he is said to be born.

1991, c. 64, s. 524.

§2. — *Presumption of paternity*

525. If a child is born during a marriage or a civil union between persons of opposite sex, or within three hundred days after its dissolution or annulment, the spouse of the child's mother is presumed to be the father.

The presumption of paternity is rebutted if the child is born more than three hundred days after the judgment ordering separation from bed and board of married spouses, unless the spouses have voluntarily resumed living together before the birth.

The presumption is also rebutted in respect of the former spouse if the child born is within three hundred days of the dissolution or annulment of the marriage or civil union, but after a subsequent marriage or civil union of the child's mother.

1991, c. 64, s. 525; 2002, c. 6, s. 28.

§3. — *Voluntary acknowledgement*

526. If maternity or paternity cannot be determined by applying the preceding articles, the filiation of a child may also be established by voluntary acknowledgement.

1991, c. 64, s. 526.

527. Maternity is acknowledged by a declaration made by a woman that she is the mother of the child.

Paternity is acknowledged by a declaration made by a man that he is the father of the child.

1991, c. 64, s. 527.

528. Mere acknowledgement of maternity or of paternity binds only the person who made it.

1991, c. 64, s. 528.

529. An established filiation which has not been successfully contested in court is not impugnable by a mere acknowledgement of maternity or of paternity.

1991, c. 64, s. 529.

SECTION II

ACTIONS RELATING TO FILIATION

530. No person may claim a filiation contrary to that assigned to him by his act of birth and the possession of status consistent with that act.

No person may contest the status of a person whose possession of status is consistent with his act of birth.

1991, c. 64, s. 530.

531. Any interested person, including the father or the mother, may, by any means, contest the filiation of a person whose possession of status is not consistent with his act of birth.

However, the presumed father may contest the filiation and disavow the child only within one year of the date on which the presumption of paternity takes effect, unless he is unaware of the birth, in which case the time limit begins to run on the day he becomes aware of it. The mother may contest the paternity of the presumed father within one year from the birth of the child.

1991, c. 64, s. 531.

532. A child whose filiation is not established by an act and by possession of status consistent therewith may claim his filiation before the court. Similarly, the father or the mother may claim paternity or maternity of a child whose filiation in their regard is not established by an act and by possession of status consistent therewith.

If the child already has another filiation established by an act of birth, by the possession of status, or by the effect of a presumption of paternity, an action to claim status may not be brought unless it is joined to an action contesting the status thus established.

The action for disavowal or for contestation of status is directed against the child and against the mother or the presumed father, as the case may be.

1991, c. 64, s. 532.

533. Proof of filiation may be made by any mode of proof. However, testimony is not admissible unless there is a commencement of proof, or unless the presumptions or indications resulting from already clearly established facts are sufficiently strong to permit its admission.

1991, c. 64, s. 533.

534. Commencement of proof results from the family documents, domestic records and papers, and all other public or private writings proceeding from a party engaged in the

contestation or who would have an interest therein if he were alive.

1991, c. 64, s. 534.

535. Every mode of proof is admissible to contest an action concerning filiation.

Any mode of proof tending to establish that the husband or civil union spouse is not the father of the child is also admissible.

1991, c. 64, s. 535; 2002, c. 6, s. 29.

535.1. Where the court is seized of an action concerning filiation, it may, on the application of an interested person, order the analysis of a sample of a bodily substance so that the genetic profile of a person involved in the action may be established.

However, where the purpose of the action is to establish filiation, the court may not issue such an order unless a commencement of proof of filiation has been established by the person having brought the action or unless the presumptions or indications resulting from facts already clearly established by that person are sufficiently strong to warrant such an order.

The court determines conditions for the sample-taking and analysis that are as respectful as possible of the physical integrity of the person concerned or of the body of the deceased. These conditions include the nature and the date and place of the sample-taking, the identity of the expert charged with taking and analyzing the sample, the use of any sample taken and the confidentiality of the analysis results.

The court may draw a negative presumption from an unjustified refusal to submit to the analysis ordered by the court.

2002, c. 19, s. 5.

536. In all cases where the law does not impose a shorter period, actions concerning filiation are prescribed by thirty years from the day the child is deprived of the claimed status or begins to enjoy the contested status.

If a child has died without having claimed his status but while he was still within the time limit to do so, his heirs may take action within three years of his death.

1991, c. 64, s. 536.

537. The death of the presumed father or of the mother before the expiry of the period for disavowal or for contestation of status does not extinguish the right of action.

The heirs may exercise this right, however, only within one year after the death.

1991, c. 64, s. 537.

CHAPTER I.1

FILIATION OF CHILDREN BORN OF ASSISTED PROCREATION

538. A parental project involving assisted procreation exists from the moment a person alone decides or spouses by mutual consent decide, in order to have a child, to resort to the genetic material of a person who is not party to the parental project.

1991, c. 64, s. 538; 2002, c. 6, s. 30.

538.1. As in the case of filiation by blood, the filiation of a child born of assisted procreation is established by the act of birth. In the absence of an act of birth, uninterrupted possession of status is sufficient; the latter is established by an adequate combination of facts which indicate the relationship of filiation between the child, the woman who gave birth to the child and, where applicable, the other party to the parental project.

This filiation creates the same rights and obligations as filiation by blood.

2002, c. 6, s. 30.

538.2. The contribution of genetic material for the purposes of a third-party parental project does not create any bond of filiation between the contributor and the child born of the parental project.

However, if the genetic material is provided by way of sexual intercourse, a bond of filiation may be established, in the year following the birth, between the contributor and the child. During that period, the spouse of the woman who gave birth to the child may not invoke possession of status consistent with the act of birth in order to oppose the application for establishment of the filiation.

2002, c. 6, s. 30.

538.3. If a child is born of a parental project involving assisted procreation between married or civil union spouses during the marriage or the civil union or within three hundred days after its dissolution or annulment, the spouse of the woman who gave birth to the child is presumed to be the child's other parent.

The presumption is rebutted if the child is born more than three hundred days after the judgment ordering separation from bed and board of the married spouses, unless they have voluntarily resumed living together before the birth.

The presumption is also rebutted in respect of the former spouse if the child is born within three hundred days of the termination of the marriage or civil union, but after a subsequent marriage or civil union of the woman who gave birth to the child.

2002, c. 6, s. 30.

539. No person may contest the filiation of a child solely on the grounds of the child being born of a parental project involving assisted procreation. However, the married or civil union spouse of the woman who gave birth to the child may contest the filiation and disavow

the child if there was no mutual parental project or if it is established that the child was not born of the assisted procreation.

The rules governing actions relating to filiation by blood apply with the necessary modifications to any contestation of a filiation established pursuant to this chapter.

1991, c. 64, s. 539; 2002, c. 6, s. 30.

539.1. If both parents are women, the rights and obligations assigned by law to the father, insofar as they differ from the mother's, are assigned to the mother who did not give birth to the child.

2002, c. 6, s. 30.

540. A person who, after consenting to a parental project outside marriage or a civil union, fails to declare his or her bond of filiation with the child born of that project in the register of civil status is liable toward the child and the child's mother.

1991, c. 64, s. 540; 2002, c. 6, s. 30.

541. Any agreement whereby a woman undertakes to procreate or carry a child for another person is absolutely null.

1991, c. 64, s. 541; 2002, c. 6, s. 30.

542. Nominative information relating to medically assisted procreation is confidential.

However, where the health of a person born of medically assisted procreation or of any descendant of that person could be seriously harmed if the person were deprived of the information requested, the court may allow the information to be transmitted confidentially to the medical authorities concerned. A descendant of such a person may also exercise this right where the health of that descendant or of a close relative could be seriously harmed if the descendant were deprived of the information requested.

1991, c. 64, s. 542; 2002, c. 6, s. 30.

CHAPTER II

ADOPTION

SECTION I

CONDITIONS FOR ADOPTION

§1. — General provisions

543. No adoption may take place except in the interest of the child and on the conditions prescribed by law.

No adoption may take place for the purpose of confirming filiation already established by blood.

1991, c. 64, s. 543.

544. No minor child may be adopted unless his father and mother or his tutor have consented to the adoption or unless he has been judicially declared eligible for adoption.

1991, c. 64, s. 544.

545. No person of full age may be adopted except by the persons who stood in loco parentis towards him when he was a minor.

The court, however, may dispense with this requirement in the interest of the person to be adopted.

1991, c. 64, s. 545.

546. Any person of full age may, alone or jointly with another person, adopt a child.

1991, c. 64, s. 546.

547. A person may not be an adopter unless he is at least eighteen years older than the person adopted, except where the person adopted is the child of the spouse of the adopter.

The court may, however, dispense with this requirement in the interest of the person to be adopted.

1991, c. 64, s. 547.

548. Consent provided for in this chapter shall be given in writing and before two witnesses.

The same rule applies to the withdrawal of consent.

1991, c. 64, s. 548.

§2. — *Consent of the adopted person*

549. No child ten years of age or over may be adopted without his consent, unless he is unable to express his will.

However, when a child under fourteen years of age refuses to give his consent, the court may defer its judgment for the period of time it indicates, or grant adoption notwithstanding his refusal.

1991, c. 64, s. 549.

550. Refusal by a child fourteen years of age or over is a bar to adoption.

1991, c. 64, s. 550.

§3. — Consent of parents or tutor

551. When adoption takes place with the consent of the parents, the consent of both parents to the adoption is necessary if the filiation of the child is established with regard to both of them.

If the filiation of the child is established with regard to only one parent, the consent of that parent is sufficient.

1991, c. 64, s. 551.

552. If either parent is deceased, or if he is unable to express his will, or if he is deprived of parental authority, the consent of the other parent is sufficient.

1991, c. 64, s. 552.

553. If both parents are deceased, if they are unable to express their will, or if they are deprived of parental authority, the adoption of the child is subject to the consent of the tutor, if the child has a tutor.

1991, c. 64, s. 553.

554. A parent of minor age may himself, without authorization, give his consent to the adoption of his child.

1991, c. 64, s. 554.

555. Consent to adoption may be general or special; special consent may be given only in favour of an ascendant of the child, a relative in the collateral line to the third degree or the spouse of that ascendant or relative; it may also be given in favour of the spouse of the father or mother. However, in the case of *de facto* spouses, they must have been cohabiting for at least three years.

1991, c. 64, s. 555; 2002, c. 6, s. 31.

556. Consent to adoption entails, until the order of placement, delegation by operation of law of parental authority to the person to whom the child is given.

1991, c. 64, s. 556.

557. A person who has given his consent to adoption may withdraw it within thirty days from the date it was given.

The child shall then be returned without formality or delay to the person who has withdrawn

his consent.

1991, c. 64, s. 557.

558. If a person has not withdrawn his consent within thirty days, he may, at any time before the order of placement, apply to the court to have the child returned.

1991, c. 64, s. 558.

§4. — Declaration of eligibility for adoption

559. The following may be judicially declared eligible for adoption:

- (1) a child over three months old, if neither his paternal filiation nor his maternal filiation has been established;
- (2) a child whose care, maintenance or education has not in fact been taken in hand by his mother, father or tutor for at least six months;
- (3) a child whose father and mother have been deprived of parental authority, if he has no tutor;
- (4) a child who has neither father nor mother, if he has no tutor.

1991, c. 64, s. 559.

560. An application for a declaration of eligibility for adoption may be made by no one except an ascendant of the child, a relative in the collateral line to the third degree, the spouse of such an ascendant or relative, the child himself if fourteen years of age or over, or a director of youth protection.

1991, c. 64, s. 560.

561. A child may not be declared eligible for adoption unless it is unlikely that his father, mother or tutor will resume custody of him and take in hand his care, maintenance or education. This unlikelihood is presumed.

1991, c. 64, s. 561.

562. The court, when declaring a child eligible for adoption, designates the person who is to exercise parental authority in his regard.

1991, c. 64, s. 562.

§5. — Special conditions respecting adoption of a child domiciled outside Québec

563. Every person domiciled in Québec wishing to adopt a child domiciled outside Québec shall previously undergo a psychosocial assessment made in accordance with the conditions provided in the Youth Protection Act.

1991, c. 64, s. 563.

564. The steps with a view to adoption are taken by the adopter, in accordance with the conditions provided in the Youth Protection Act, or, at the request of the adopter, by the Minister of Health and Social Services or an organization certified under the said Act.

1991, c. 64, s. 564.

565. The adoption of a child domiciled outside Québec may be granted only by judicial decision either outside Québec or in Québec. A judgment granted in Québec is preceded by an order of placement. For a judgment granted outside Québec, recognition by the court in Québec is necessary.

1991, c. 64, s. 565.

SECTION II

ORDER OF PLACEMENT AND ADOPTION JUDGMENT

566. The placement of a minor may not take place except on a court order nor may the adoption of a child be granted unless the child has lived with the adopter for at least six months since the court order.

The period may be reduced by up to three months, however, particularly in consideration of the time during which the minor has already lived with the adopter before the order.

1991, c. 64, s. 566.

567. An order of placement may not be granted before the lapse of thirty days after the giving of consent to adoption.

1991, c. 64, s. 567.

568. Before granting an order of placement, the court ascertains that the conditions for adoption have been complied with and, particularly, that the prescribed consents have been validly given.

Where the placement of a child domiciled outside Québec is made under an agreement entered into by virtue of the Youth Protection Act, the court also verifies that the procedure followed is as provided in the agreement.

Even if the adopter has not complied with the provisions of articles 563 and 564, the placement may be ordered for serious reasons and if the interest of the child demands it. However, the application shall be accompanied with a psychosocial assessment made by the director of youth protection.

1991, c. 64, s. 568.

569. The order of placement confers the exercise of parental authority on the adopter; it allows the child, for the term of the placement, to exercise his civil rights under the surname and given names chosen by the adopter, which are recorded in the order.

The order is a bar to the return of the child to his parents or to his tutor and to the establishment of filial relationship between the child and his parents by blood.

1991, c. 64, s. 569.

570. The effects of the order of placement cease if placement terminates or if the court refuses to grant the adoption.

1991, c. 64, s. 570.

571. If the adopter fails to present his application for adoption within a reasonable time after the expiry of the minimum period of placement, the order of placement may be revoked on the application of the child himself if he is fourteen years of age or over or by any interested person.

1991, c. 64, s. 571.

572. Where the effects of the order of placement cease and no adoption has taken place, the court, even of its own motion, designates the person who is to exercise parental authority over the child; the director of youth protection who was the legal tutor before the order of placement again becomes the legal tutor.

1991, c. 64, s. 572.

573. The court grants adoption on the application of the adopters unless a report indicates that the child has not adapted to his adopting family. In this case or whenever the interest of the child demands it, the court may require any additional proof it considers necessary.

1991, c. 64, s. 573.

574. The court, where called upon to recognize an adoption judgment rendered outside Québec, ascertains that the rules respecting consent to adoption and eligibility for adoption have been observed.

Where the adoption judgment has been rendered outside Québec under an agreement entered into by virtue of the Youth Protection Act, the court also verifies that the procedure followed is as provided in the agreement.

Even if the adopter has not complied with the provisions of articles 563 and 564, recognition may be granted for serious reasons and if the interest of the child demands it. However, the application shall be accompanied with a psychosocial assessment.

1991, c. 64, s. 574.

575. If either of the adopters dies after the order of placement, the court may grant adoption even with regard to the deceased adopter.

The court may also recognize an adoption judgment rendered outside Québec notwithstanding the death of the adopter.

1991, c. 64, s. 575.

576. The court assigns to the adopted person the surname and given names chosen by the adopter unless, at the request of the adopter or of the adopted person, it allows him to keep his original surname and given names.

1991, c. 64, s. 576.

SECTION III

EFFECTS OF ADOPTION

577. Adoption confers on the adopted person a filiation which replaces his or her original filiation.

The adopted person ceases to belong to his or her original family, subject to any impediments to marriage or a civil union.

1991, c. 64, s. 577; 2002, c. 6, s. 32.

578. Adoption creates the same rights and obligations as filiation by blood.

The court may, however, according to circumstances, permit a marriage or civil union in the collateral line between the adopted person and a member of his or her adoptive family.

1991, c. 64, s. 578; 2002, c. 6, s. 33.

578.1. If the parents of an adopted child are of the same sex and where different rights and obligations are assigned by law to the father and to the mother, the parent who is biologically related to the child has the rights and obligations assigned to the father in the case of a male couple and those assigned to the mother in the case of a female couple. The adoptive parent has the rights and obligations assigned by law to the other parent.

If neither parent is biologically related to the child, the rights and obligations of each parent are determined in the adoption judgment.

2002, c. 6, s. 34.

579. When adoption is granted, the effects of the preceding filiation cease; the tutor, if any, loses his or her rights and is discharged from his or her duties regarding the adopted person, save the obligation to render account.

Notwithstanding the foregoing, a person's adoption of a child of his or her spouse does not dissolve the bond of filiation between the child and that parent.

1991, c. 64, s. 579; 2002, c. 6, s. 35.

580. Where one of the adopters dies after the order of placement is made, the adoption produces its effects from the date of the order.

1991, c. 64, s. 580.

581. Recognition of an adoption judgment rendered outside Québec produces the same effects as an adoption judgment rendered in Québec from the time the adoption judgment was rendered.

1991, c. 64, s. 581.

SECTION IV

CONFIDENTIALITY OF ADOPTION FILES

582. The judicial and administrative files respecting the adoption of a child are confidential and no information contained in them may be revealed except as required by law.

However, the court may allow an adoption file to be examined for the purposes of study, teaching, research or a public inquiry, provided that the anonymity of the child, of the parents and of the adopter is preserved.

1991, c. 64, s. 582.

583. An adopted person of full age or an adopted minor fourteen years of age or over is entitled to obtain the information enabling him to find his parents if they have previously consented thereto. The same holds true of the parents of an adopted child if the child, once of full age, has previously consented thereto.

An adopted minor under fourteen years of age is entitled to obtain information enabling him to find his parents if the parents and the adoptive parents have previously consented thereto.

Consent may not be solicited; however, an adopted minor may not be informed of the application for information made by his father or mother.

1991, c. 64, s. 583.

584. Where serious injury could be caused to the health of the adopted person, whether a minor or of full age, or of any of his close relatives if he is deprived of the information he requires, the court may allow the adopted person to obtain such information.

A close relative of the adopted person may also avail himself of such right if the fact of being deprived of the information he requires could be the cause of serious injury to his

health or the health of any of his close relatives.

1991, c. 64, s. 584.

TITLE THREE

OBLIGATION OF SUPPORT

585. Married or civil union spouses, and relatives in the direct line in the first degree, owe each other support.

1991, c. 64, s. 585; 1996, c. 28, s. 1; 2002, c. 6, s. 36.

586. Proceedings for the support of a minor child may be instituted by the holder of parental authority, his tutor, or any person who has custody of him, according to the circumstances.

The court may order the support payable to the person who has custody of the child.

1991, c. 64, s. 586.

587. In awarding support, account is taken of the needs and means of the parties, their circumstances and, as the case may be, the time needed by the creditor of support to acquire sufficient autonomy.

1991, c. 64, s. 587.

587.1. As regards the support owed to a child by his parents, the basic parental contribution, as determined pursuant to the rules for the determination of child support payments adopted under the Code of Civil Procedure, is presumed to meet the needs of the child and to be in proportion to the means of the parents.

The basic parental contribution may be increased having regard to certain expenses relating to the child which are specified in the rules, to the extent that such expenses are reasonable considering the needs and means of the parents and child.

1996, c. 68, s. 1.

587.2. The support to be provided by a parent for his child is equal to that parent's share of the basic parental contribution, increased, where applicable, having regard to specified expenses relating to the child.

The court may, however, increase or reduce the level of support if it is of the opinion that, in the special circumstances of the case, not doing so would entail undue hardship for one of the parents. Such hardship may be caused by, among other things, the costs involved in exercising visiting rights in respect of the child, obligations of support toward persons other than the child or reasonable debts incurred to meet family needs. The court may also increase or reduce the level of support if it is warranted by the value of either parent's assets or the extent of the resources available to the child.

1996, c. 68, s. 1.

587.3. Parents may make a private agreement stipulating a level of child support that departs from the level which would be required to be provided under the rules for the determination of child support payments, subject to the court being satisfied that the needs of the child are adequately provided for.

1996, c. 68, s. 1.

588. The court may award provisional support to the creditor of support for the duration of the proceedings.

It may also award a provisional sum to the creditor of support to cover the costs of the proceedings.

1991, c. 64, s. 588.

589. Support is payable as a pension; the court may, by way of exception, replace or complete the alimentary pension by a lump sum payable in cash or by instalments.

1991, c. 64, s. 589.

590. If support is payable as a pension, it is indexed by operation of law on 1 January each year, in accordance with the annual Pension Index established pursuant to section 119 of the Act respecting the Québec Pension Plan, in order to maintain the real monetary value of the claim resulting from the judgment awarding support.

However, where the application of the index brings about a serious imbalance between the needs of the creditor and the means of the debtor, the court may, in exercising its jurisdiction, either fix another basis of indexation or order that the claim not be indexed.

1991, c. 64, s. 590.

591. The court, if it considers it necessary, may order the debtor to furnish sufficient security beyond the legal hypothec for payment of support, or order the constitution of a trust to secure such payment.

1991, c. 64, s. 591.

592. If the debtor offers to take the creditor of support into his home, he may, if circumstances permit, be dispensed from paying all or part of the support.

1991, c. 64, s. 592.

593. The creditor may pursue a remedy against one of the debtors of support or against several of them simultaneously.

The court fixes the amount of support that each of the debtors sued or impleaded shall pay.

1991, c. 64, s. 593.

594. The judgment awarding support, whether it is indexed or not, may be reviewed by the court whenever warranted by circumstances.

However, a judgment awarding payment of a lump sum may be reviewed only if it has not been executed.

1991, c. 64, s. 594.

595. Support may be claimed for needs existing up to one year before the application.

The creditor shall prove that he was in fact unable to act sooner, unless he made a demand to the debtor within one year before the application, in which case support is awarded from the date of the demand.

1991, c. 64, s. 595.

596. A debtor from whom arrears are claimed may plead a change, after judgment, in his condition or in that of his creditor and be released from payment of the whole or a part of them.

However, in no case where the arrears claimed have been due for over six months may the debtor be released from payment of them unless he shows that it was impossible for him to exercise his right to obtain a review of the judgment fixing the alimentary pension.

1991, c. 64, s. 596; 2002, c. 19, s. 15.

TITLE FOUR

PARENTAL AUTHORITY

597. Every child, regardless of age, owes respect to his father and mother.

1991, c. 64, s. 597.

598. A child remains subject to the authority of his father and mother until his majority or emancipation.

1991, c. 64, s. 598.

599. The father and mother have the rights and duties of custody, supervision and education of their children.

They shall maintain their children.

1991, c. 64, s. 599.

600. The father and mother exercise parental authority together.

If either parent dies, is deprived of parental authority or is unable to express his or her will, parental authority is exercised by the other parent.

1991, c. 64, s. 600.

601. The person having parental authority may delegate the custody, supervision or education of the child.

1991, c. 64, s. 601.

602. No unemancipated minor may leave his domicile without the consent of the person having parental authority.

1991, c. 64, s. 602.

603. Where the father or the mother performs alone any act of authority concerning their child, he or she is, with regard to third persons in good faith, presumed to be acting with the consent of the other parent.

1991, c. 64, s. 603.

604. In the case of difficulties relating to the exercise of parental authority, the person having parental authority may refer the matter to the court, which will decide in the interest of the child after fostering the conciliation of the parties.

1991, c. 64, s. 604.

605. Whether custody is entrusted to one of the parents or to a third person, and whatever the reasons may be, the father and mother retain the right to supervise the maintenance and education of the children, and are bound to contribute thereto in proportion to their means.

1991, c. 64, s. 605.

606. The court may, for a grave reason and in the interest of the child, on the application of any interested person, declare the father, the mother or either of them, or a third person on whom parental authority may have been conferred, to be deprived of such authority.

Where such a measure is not required by the situation but action is nevertheless necessary, the court may declare, instead, the withdrawal of an attribute of parental authority or of the exercise of such authority. The court may also directly examine an application for withdrawal.

1991, c. 64, s. 606.

607. The court may, in declaring deprivation or withdrawal of an attribute of parental authority or of the exercise of such authority, designate the person who is to exercise

parental authority or an attribute thereof; it may also, where applicable, obtain the advice of the tutorship council before designating the person or, if required in the interest of the child, appointing a tutor.

1991, c. 64, s. 607.

608. Deprivation extends to all minor children born at the time of the judgment, unless the court decides otherwise.

1991, c. 64, s. 608.

609. Deprivation entails the exemption of the child from the obligation to provide support, unless the court decides otherwise. However, where circumstances warrant it, the exemption may be lifted after the child reaches full age.

1991, c. 64, s. 609.

610. A father or mother who has been deprived of parental authority or from whom an attribute of parental authority has been withdrawn may have the withdrawn authority restored, provided he or she alleges new circumstances, subject to the provisions governing adoption.

1991, c. 64, s. 610.

611. In no case may the father or mother, without a grave reason, interfere with personal relations between the child and his grandparents.

Failing agreement between the parties, the terms and conditions of these relations are decided by the court.

1991, c. 64, s. 611.

612. Decisions concerning the children may be reviewed at any time by the court, if warranted by circumstances.

1991, c. 64, s. 612.

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BOOK THREE

SUCCESSIONS

TITLE ONE

OPENING OF SUCCESSIONS AND QUALITIES FOR SUCCESSION

CHAPTER I

OPENING OF SUCCESSIONS

613. The succession of a person opens by his death, at the place of his last domicile.

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

1991, c. 64, s. 613.

614. In determining succession, the law considers neither the origin nor the nature of the property; all the property as a whole constitutes a single patrimony.

1991, c. 64, s. 614.

615. When a person dies leaving property situated outside Québec or claims against persons not residing in Québec, letters of verification may be obtained in the manner provided in the Code of Civil Procedure.

1991, c. 64, s. 615.

616. Where persons die and it is impossible to determine which survived the other, they are deemed to have died at the same time if at least one of them is called to the succession of the other.

The succession of each of the decedents then devolves to the persons who would have been called to take it in his place.

1991, c. 64, s. 616.

CHAPTER II

QUALITIES FOR SUCCESSION

617. Natural persons who exist at the time the succession opens, including absentees presumed to be alive at that time and children conceived but yet unborn, if they are born alive and viable, may inherit.

In the case of a substitution or trust, persons who have the required qualities when the disposition produces its effect in their regard may also inherit.

1991, c. 64, s. 617.

618. The State may receive by will. Legal persons may receive by will such property as they may legally hold.

A trustee may receive a legacy intended for the trust or a legacy to be used to accomplish the object of the trust.

1991, c. 64, s. 618.

619. A successor to whom an intestate succession devolves or who receives a universal legacy or a legacy by general title by will is an heir from the opening of the succession, provided he accepts it.

1991, c. 64, s. 619.

620. The following persons are unworthy of inheriting by operation of law:

- (1) a person convicted of making an attempt on the life of the deceased;
- (2) a person deprived of parental authority over his child while his child is exempted from the obligation of providing support, in respect of that child's succession.

1991, c. 64, s. 620.

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

- (1) a person guilty of cruelty towards the deceased or having otherwise behaved towards

him in a seriously reprehensible manner;

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

(3) a person who had hindered the testator in the writing, amendment or revocation of his will.

1991, c. 64, s. 621.

622. An heir is not unworthy of inheriting nor subject to being declared so if the deceased knew the cause of unworthiness and yet conferred a benefit on him or did not modify the liberality when he could have done so.

1991, c. 64, s. 622.

623. Any successor may, within one year after the opening of the succession or becoming aware of a cause of unworthiness, apply to the court to declare an heir unworthy if that heir is not unworthy by operation of law.

1991, c. 64, s. 623.

624. The surviving married or civil union spouse in good faith of the deceased inherits if the marriage or civil union is declared null after the death.

1991, c. 64, s. 624; 2002, c. 6, s. 37.

TITLE TWO

TRANSMISSION OF SUCCESSIONS

CHAPTER I

SEISIN

625. The heirs are seised, by the death of the deceased or by the event which gives effect to the legacy, of the patrimony of the deceased, subject to the provisions on the liquidation of successions.

The heirs are not, unless by way of exception provided for in this Book, bound by the obligations of the deceased to a greater extent than the value of the property they receive, and they retain their right to demand payment of their claims from the succession.

The heirs are seised of the rights of action of the deceased against any person or that person's representatives, for breach of his personality rights.

1991, c. 64, s. 625.

CHAPTER II

PETITION OF INHERITANCE AND ITS EFFECTS ON THE TRANSMISSION OF THE SUCCESSION

626. A successor is entitled to have his heirship recognized at any time within ten years from the opening of the succession to which he claims to be entitled or from the day his right arises.

1991, c. 64, s. 626.

627. An apparent heir is obliged, by the recognition of the heirship of the successor, to restore everything he has received from the succession without being entitled to it, in accordance with the rules in the Book on Obligations relating to restitution of prestations.

1991, c. 64, s. 627.

628. Any person who is unworthy and who has received property from the succession is deemed to be an apparent heir in bad faith.

1991, c. 64, s. 628.

629. Obligations of the deceased discharged by the apparent heirs otherwise than out of property from the succession are reimbursed by the true heirs.

1991, c. 64, s. 629.

CHAPTER III

THE RIGHT OF OPTION

SECTION I

DELIBERATION AND OPTION

630. Every successor has the right to accept or to renounce the succession.

The option is indivisible. However, a successor called to the succession in several ways has a separate option for each.

1991, c. 64, s. 630.

631. No person may exercise his option with respect to a succession not yet opened or make any stipulation with respect to such a succession, even with the consent of the person whose succession it is.

1991, c. 64, s. 631.

632. A successor has six months from the day his right arises to deliberate and exercise his option. The period is extended of right by as many days as necessary to afford him sixty

days from closure of the inventory.

During the period for deliberation, no judgment may be rendered against the successor as an heir unless he has already accepted the succession.

1991, c. 64, s. 632.

633. If the successor aware of his heirship does not renounce within the period for deliberation, he is presumed to have accepted unless the period has been extended by the court. If a successor is unaware of his heirship, he may be constrained to exercise his option within the time determined by the court.

If a successor does not exercise his option within the time determined by the court, he is presumed to have renounced.

1991, c. 64, s. 633.

634. If a successor renounces within the period for deliberation fixed in article 632, the lawful expenses incurred to that time are borne by the succession.

1991, c. 64, s. 635.

635. If a successor dies before exercising his option, his heirs deliberate and exercise the option within the period allotted to them for deliberation and option in respect of the succession of their predecessor in title.

Each of the heirs of the successor exercises his option separately; the share of an heir who renounces accrues to the coheirs.

1991, c. 64, s. 635.

636. A person may cause an option he has exercised to be annulled on the grounds and within the time prescribed for invoking nullity of contracts.

1991, c. 64, s. 636.

SECTION II

ACCEPTANCE

637. Acceptance is express or tacit. It may also result from the law.

Acceptance is express where the successor formally assumes the title or quality of heir; it is tacit where the successor performs an act that necessarily implies his intention of accepting.

1991, c. 64, s. 637.

638. A succession devolving to a minor, to a protected person of full age or to an absent person is deemed to be accepted, except where it is renounced within the time for

deliberation and option,

(1) in the case of an unemancipated minor, a person of full age under tutorship or curatorship or an absent person, by the representative of the successor with the authorization of the tutorship council;

(2) in the case of an emancipated minor or person of full age who requires assistance, by the successor himself, assisted by his tutor or his adviser.

In no case is the minor, the protected person of full age or the absent person liable for the payment of debts of the succession amounting to more than the value of the property he receives.

1991, c. 64, s. 638.

639. The fact that the successor exempts the liquidator from making an inventory or mingles property of the succession with his personal property, unless the property was mingled before the death, entails acceptance of the succession.

1991, c. 64, s. 639.

640. The succession is presumed to be accepted where the successor, knowing that the liquidator refuses or is neglecting to make the inventory, himself neglects to make the inventory or to apply to the court either to replace the liquidator or to order him to make the inventory within sixty days after expiry of the six months for deliberation.

1991, c. 64, s. 640.

641. The transfer by a person of his rights in a succession by gratuitous or onerous title entails acceptance.

The same rule applies to renunciation in favour of one or more coheirs, even by gratuitous title, and to renunciation by onerous title, even though it be in favour of all the coheirs without distinction.

1991, c. 64, s. 641.

642. Mere conservatory acts and acts of supervision and provisional administration do not, by themselves, entail acceptance of the succession.

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

1991, c. 64, s. 642.

643. The distribution of the clothing, private papers, medals and diplomas of the deceased and family souvenirs does not by itself entail acceptance of the succession if it is done with the agreement of all the successors.

Acceptance by a successor of the transmission in his favour of a site intended for a body or ashes does not entail acceptance of the succession.

1991, c. 64, s. 643.

644. If a succession includes perishable things, the successor may, before the designation of a liquidator, sell them by agreement or, if he cannot find a buyer in due time, give them to charitable institutions or distribute them among the successors, without implying acceptance on his part.

He may also alienate movable property which, although not perishable, is expensive to preserve or is likely to depreciate rapidly. In this case, he acts as an administrator of the property of others.

1991, c. 64, s. 644.

645. Acceptance confirms the transmission which took place by operation of law at the time of death.

1991, c. 64, s. 645.

SECTION III

RENUNCIATION

646. Renunciation is express. It may also result from the law.

Express renunciation is made by notarial act *en minute* or by a judicial declaration which is recorded.

1991, c. 64, s. 646.

647. A person who renounces is deemed never to have been a successor.

1991, c. 64, s. 647.

648. A successor may renounce the succession provided that he has not performed any act entailing acceptance and that no judgment having the authority of a final judgment (*res judicata*) has been rendered against him as an heir.

1991, c. 64, s. 648.

649. A successor who has renounced the succession retains the faculty of accepting it for ten years from the day his right arose, if it has not been accepted by another person.

Acceptance is made by notarial act *en minute* or by a judicial declaration which is recorded.

The heir takes the succession in its actual condition at that time and subject to the acquired

rights of third persons in the property of the succession.

1991, c. 64, s. 649.

650. A successor who has been unaware of his heirship or has not made it known for ten years from the day his right arose is deemed to have renounced the succession.

1991, c. 64, s. 650.

651. A successor who, in bad faith, has abstracted or concealed property of the succession or failed to include property in the inventory is deemed to have renounced the succession notwithstanding any prior acceptance.

1991, c. 64, s. 651.

652. The creditors of a person who renounces may, if the renunciation is damaging to them, apply within one year to the court to declare that the renunciation may not be set up against them, and accept the succession in lieu of their debtor.

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

1991, c. 64, s. 652.

TITLE THREE

LEGAL DEVOLUTION OF SUCCESSIONS

CHAPTER I

HEIRSHIP

653. Unless otherwise provided by testamentary dispositions, a succession devolves to the surviving married or civil union spouse and relatives of the deceased, in the order and according to the rules laid down in this Title. Where there is no heir, it falls to the State.

1991, c. 64, s. 653; 2002, c. 6, s. 38.

654. The surviving spouse's heirship is not dependent on the renunciation of his or her rights and benefits by reason of the marriage or civil union.

1991, c. 64, s. 654; 2002, c. 6, s. 39.

CHAPTER II

RELATIONSHIP

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

1991, c. 64, s. 655.

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

1991, c. 64, s. 656.

657. The direct line is the series of degrees between persons descended one from another. The number of degrees in the direct line is equal to the number of generations between the successor and the deceased.

1991, c. 64, s. 657.

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

1991, c. 64, s. 658.

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

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

1991, c. 64, s. 659.

CHAPTER III

REPRESENTATION

660. Representation is a favour granted by law by which a relative is called to a succession which his ascendant, who is a closer relative of the deceased, would have taken but is unable to take himself, having died previously or at the same time or being unworthy.

1991, c. 64, s. 660.

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

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

1991, c. 64, s. 661.

662. Representation does not take place in favour of ascendants, the nearer ascendant in each line excluding the more distant.

1991, c. 64, s. 662.

663. In the collateral line, representation takes place, between privileged collaterals, in favour of the descendants in the first degree of the brothers and sisters of the deceased, whether or not they compete with them and, between ordinary collaterals, in favour of the other descendants of the brothers and sisters of the deceased in other degrees, whether they are in equal or unequal degrees of relationship to each other.

1991, c. 64, s. 663.

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

1991, c. 64, s. 664.

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

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

1991, c. 64, s. 665.

CHAPTER IV

ORDER OF DEVOLUTION OF SUCCESSIONS

SECTION I

DEVOLUTION TO THE SURVIVING SPOUSE AND TO DESCENDANTS

666. If the deceased leaves a spouse and descendants, the succession devolves to them.

The spouse takes one-third of the succession and the descendants, the other two-thirds.

1991, c. 64, s. 666.

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

1991, c. 64, s. 667.

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

If there is representation, they share by roots.

1991, c. 64, s. 668.

669. Unless there is representation, the descendant in the closest degree takes the share of

the descendants, to the exclusion of all the others.

1991, c. 64, s. 669.

SECTION II

DEVOLUTION TO THE SURVIVING SPOUSE AND TO PRIVILEGED ASCENDANTS OR COLLATERALS

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

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

1991, c. 64, s. 670.

671. Where there are neither descendants, privileged ascendants nor privileged collaterals, the entire succession devolves to the surviving spouse.

1991, c. 64, s. 671.

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

1991, c. 64, s. 672.

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

1991, c. 64, s. 673.

674. Where there are no descendants and no surviving spouse, the succession is partitioned equally between the privileged ascendants and the privileged collaterals.

Where there are no privileged ascendants, the privileged collaterals inherit the entire succession, and vice versa.

1991, c. 64, s. 674.

675. Where the privileged ascendants inherit, they share equally; where only one of the privileged ascendants inherits, he takes the share that would have devolved to the other.

1991, c. 64, s. 675.

676. Where the privileged collaterals who inherit are fully related by blood to the deceased, they share equally or by roots, as the case may be.

Where this is not the case, the share which devolves to them is divided equally 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 privileged collaterals are in one line only, they inherit the entire succession to the exclusion of all other ascendants and ordinary collaterals in the other line.

1991, c. 64, s. 676.

SECTION III

DEVOLUTION TO ORDINARY ASCENDANTS AND COLLATERALS

677. The ordinary ascendants and collaterals are not called to the succession unless the deceased left no spouse, no descendants and no privileged ascendants or collaterals.

1991, c. 64, s. 677.

678. If the ordinary collaterals include descendants of the privileged collaterals, these descendants take one-half of the succession and the other half devolves to the ascendants and the other collaterals.

Where there are no descendants of privileged collaterals, the entire succession devolves to the ascendants and the other collaterals, and vice versa.

1991, c. 64, s. 678.

679. The succession devolving to the ordinary ascendants and the other collaterals of the deceased is divided equally between the paternal and maternal lines.

In each line, the persons who inherit share by heads.

1991, c. 64, s. 679.

680. In each line, the ascendant in the second degree takes the share allotted to his line, to the exclusion of the other ordinary ascendants or collaterals.

Where in one line there is no ascendant in the second degree, the share allotted to that line devolves to the closest ordinary collaterals descended from that ascendant.

1991, c. 64, s. 680.

681. Where in one line there are no ordinary collaterals descended from the ascendants in the second degree, the share allotted to that line devolves to the ascendants in the third degree or, if there are none, to the closest ordinary collaterals descended from them, and so on until no relatives within the degrees of succession remain.

1991, c. 64, s. 681.

682. If there are no relatives within the degrees of succession in one line, the relatives in the other line inherit the entire succession.

1991, c. 64, s. 682.

683. Relatives beyond the eighth degree do not inherit.

1991, c. 64, s. 683.

CHAPTER V

THE SURVIVAL OF THE OBLIGATION TO PROVIDE SUPPORT

684. Every creditor of support may within six months after the death claim a financial contribution from the succession as support.

The right exists even where the creditor is an heir or a legatee by particular title or where the right to support was not exercised before the date of the death, but does not exist in favour of a person unworthy of inheriting from the deceased.

1991, c. 64, s. 684.

685. The contribution is made in the form of a lump sum payable in cash or by instalments.

The contribution made to the creditors of support, with the exception of that made to the former spouse of the deceased who was in fact receiving support at the time of the death, is fixed with the concurrence of the liquidator of the succession acting with the consent of the heirs and legatees by particular title or, failing agreement, by the court.

1991, c. 64, s. 685.

686. In fixing the contribution, the needs and means of the creditor of support, his circumstances and the time he needs to acquire sufficient autonomy or, if he was in fact receiving support from the deceased at the time of the death, the amount of the instalments that had been fixed by the court for the payment of the alimentary support or of the lump sum awarded as support are taken into account.

Account is also taken of the assets of the succession, the benefits derived from the succession by the creditor of support, the needs and means of the heirs and legatees by particular title and, where that is the case, the right to support which may be claimed by other persons.

1991, c. 64, s. 686.

687. Where the contribution is claimed by the spouse or a descendant, the value of the liberalities made by the deceased by act *inter vivos* during the three years preceding the death and those taking effect at the death are considered to be part of the succession for the fixing of the contribution.

1991, c. 64, s. 687.

688. The contribution granted to the spouse or to a descendant may not exceed the difference between one-half of the share he could have claimed had the entire succession, including the value of the liberalities, devolved according to law, and what he receives from the succession.

The contribution granted to the former spouse is equal to the value of twelve months' support, and that granted to other creditors of support is equal to the value of six months' support; however, in neither case may such a contribution, even where the creditor was in fact receiving support from the deceased at the time of the succession, exceed the lesser of the value of twelve or six months' support and ten per cent of the value of the succession including, where that is the case, the value of the liberalities.

1991, c. 64, s. 688.

689. Where the assets of the succession are insufficient to make full payment of the contributions due to the spouse or to a descendant, as a result of liberalities made by acts *inter vivos* during the three years preceding the death or taking effect at the death, the court may order the liberalities reduced.

Liberalities to which the spouse or descendant consented may not be reduced, however, and those he has received shall be debited from his claim.

1991, c. 64, s. 689.

690. Any alienation, security or charge granted by the deceased for a prestation clearly of smaller value than that of the property at the time it was made is presumed to be a liberality.

1991, c. 64, s. 690.

691. Benefits under a retirement plan contemplated in article 415 or under a contract of insurance of persons, where these benefits would have been part of the succession or would have been paid to the creditor had it not been for the designation of a subrogated holder or a beneficiary, by the deceased, during the three years preceding the death, are classed as liberalities. Notwithstanding any provision to the contrary, rights conferred by benefits under any such plan or contract may be transferred or seized for the payment of support due under this chapter.

1991, c. 64, s. 691.

692. The cost of education or maintenance and customary presents are not considered to be liberalities unless, considering the means of the deceased, they are manifestly exaggerated.

1991, c. 64, s. 692.

693. Reduction of the liberalities may operate against only one of the beneficiaries or against several of them simultaneously.

If need be, the court fixes the share that shall be payable by each of the beneficiaries sued or

impleaded.

1991, c. 64, s. 693.

694. Payment of the reduction is made, failing agreement between the parties, on the conditions determined by the court and on the terms and conditions of warranty and payment it fixes.

Payment in kind may not be ordered, but the debtor may relieve his debt at any time by handing over the property.

1991, c. 64, s. 694.

695. Property is valued according to its condition at the time of the liberality and its value at the opening of the succession; if property has been alienated, its value at the time of alienation or, in the case of reinvestment, the value of the replacement property on the opening day of the succession is the value considered.

Liberalties in the form of a usufruct, right of use, annuity or income from a trust are counted at their capital value on the opening day of the succession.

1991, c. 64, s. 695.

CHAPTER VI

RIGHTS OF THE STATE

696. Where the deceased leaves no spouse or relatives within the degrees of succession, or where all the successors have renounced the succession, or where no successor is known or claims the succession, the State takes of right the property of the succession situated in Québec.

Any testamentary disposition which would render this right nugatory without otherwise providing for the devolution of the property is without effect.

1991, c. 64, s. 696.

697. The State is not an heir, but, once all known successors have renounced the succession, or, where no successor is known or claims the succession, six months after the death, is seised of the property of the deceased in the same manner as an heir.

It is not liable for obligations of the deceased amounting to more than the value of the property it receives.

1991, c. 64, s. 697.

698. Seisin of a succession which falls to the State is vested in the Public Curator.

No property of a succession may be mingled with the property of the State so long as it

remains under the administration of the Public Curator.

1991, c. 64, s. 698; 1997, c. 80, s. 46.

699. Subject to the Acts respecting public curatorship and without any other formality, the Public Curator acts as liquidator of the succession. He is bound to make an inventory and give notice of the seisin of the State in the *Gazette officielle du Québec*; he shall also cause the notice to be published in a newspaper circulated in the locality where the deceased was domiciled.

1991, c. 64, s. 699.

700. At the end of the liquidation, the Public Curator renders an account to the Minister of Finance.

The Public Curator gives and publishes a notice of the end of the liquidation in the same manner as for a notice of seisin of the State. He indicates in the notice the residue of the succession and the time granted to successors to assert their rights of heirship.

1991, c. 64, s. 700.

701. The Public Curator, upon rendering account, transfers to the Minister of Finance the amounts constituting the residue of the succession, which then become the property of the State.

Heirs who establish their quality may, however, within ten years from the opening of the succession or from the day their right arises, recover those amounts from the Public Curator with interest calculated at the rate prescribed pursuant to the Public Curator Act from the time the amounts were transferred to the Minister of Finance.

1991, c. 64, s. 701; 1997, c. 80, s. 47.

702. An heir who claims the succession before the end of the liquidation takes it in its actual condition, subject to his right to claim damages if the legal formalities have not been followed.

1991, c. 64, s. 702; 1997, c. 80, s. 48.

TITLE FOUR

WILLS

CHAPTER I

THE NATURE OF WILLS

703. Every person having the required capacity may, by will, provide otherwise than as by law for the devolution upon his death of the whole or part of his property.

1991, c. 64, s. 703.

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

In no case may a will be made jointly by two or more persons.

1991, c. 64, s. 704.

705. The act is a will even if it contains only provisions regarding the liquidation of the succession, the revocation of previous testamentary dispositions or the exclusion of an heir.

1991, c. 64, s. 705.

706. No person may, even in a marriage or civil union contract, except within the limits provided in article 1841, renounce his or her right to make a will, to dispose of his or her property in contemplation of death or to revoke the testamentary dispositions he or she has made.

1991, c. 64, s. 706; 2002, c. 6, s. 40.

CHAPTER II

THE CAPACITY REQUIRED TO MAKE A WILL

707. The capacity of the testator is considered relatively to the time he made his will.

1991, c. 64, s. 707.

708. A minor may not dispose of any part of his property by will, except articles of little value.

1991, c. 64, s. 708.

709. A will made by a person of full age after he has been placed under tutorship may be confirmed by the court if the nature of its dispositions and the circumstances in which it was drawn up allow it.

1991, c. 64, s. 709.

710. A person of full age under curatorship may not make a will. A person of full age provided with an adviser may make a will without assistance.

1991, c. 64, s. 710.

711. A tutor, curator or adviser may not make a will on behalf of the person whom he represents or assists, either alone or jointly with that person.

1991, c. 64, s. 711.

CHAPTER III

FORMS OF WILLS

SECTION I

GENERAL PROVISIONS

712. The only forms of will that may be made are the notarial will, the holograph will and the will made in the presence of witnesses.

1991, c. 64, s. 712.

713. The formalities governing the various kinds of wills shall be observed on pain of nullity.

However, if a will made in one form does not meet the requirements of that form of will, it is valid as a will made in another form if it meets the requirements for validity of that other form.

1991, c. 64, s. 713.

714. A holograph will or a will made in the presence of witnesses that does not meet all the requirements of that form is valid nevertheless if it meets the essential requirements thereof and if it unquestionably and unequivocally contains the last wishes of the deceased.

1991, c. 64, s. 714.

715. No person may cause the validity of his will to be subject to any formality not required by law.

1991, c. 64, s. 715.

SECTION II

NOTARIAL WILLS

716. A notarial will is made before a notary, *en minute*, in the presence of a witness or, in certain cases, two witnesses.

The date and place of the making of the will shall be noted on the will.

1991, c. 64, s. 716.

717. A notarial will is read by the notary to the testator alone or, if the testator chooses, in the presence of a witness. Once the reading is done, the testator shall declare in the presence

of the witness that the act read contains the expression of his last wishes.

The will, after being read, is signed by the testator, the witness or witnesses and the notary, in each other's presence.

1991, c. 64, s. 717; 1992, c. 57, s. 716.

718. The formalities governing notarial wills are presumed to have been observed even when this is not expressly stated, subject to the Acts respecting notaries.

However, where special formalities are attached to certain wills, the reason for their observance shall be mentioned in the act.

1991, c. 64, s. 718.

719. The notarial will of a testator who cannot sign contains a declaration by him to that effect. This declaration also is read by the notary to the testator in the presence of two witnesses, and it compensates for the absence of the signature of the testator.

1991, c. 64, s. 719.

720. The notarial will of a blind person is read by the notary to the testator in the presence of two witnesses.

In the will, the notary declares that he has read the will in the presence of the witnesses, and this declaration also is read.

1991, c. 64, s. 720.

721. The notarial will of a deaf person or a deaf-mute is read by the testator himself in the presence of the notary alone or, if he chooses, of the notary and a witness. If the testator is only deaf, he reads the will aloud.

In the will, the testator declares that he has read it in the presence of the notary and, where such is the case, the witness.

If the testator is deaf-mute, the declaration is read to him by the notary in the presence of the witness; if he is deaf, it is read aloud by the testator himself, in the presence of the notary and the witness.

1991, c. 64, s. 721.

722. A person unable to express himself aloud who wishes to make a notarial will conveys his wishes to the notary in writing.

1991, c. 64, s. 722.

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

third degree, or connected with him by marriage or a civil union.

1991, c. 64, s. 723; 2002, c. 6, s. 235.

724. The notary before whom a will is made may be designated in the will as the liquidator, provided his discharge of that office is gratuitous.

1991, c. 64, s. 724.

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

Any person of full age may witness a notarial will, except an employee of the attesting notary who is not himself a notary.

1991, c. 64, s. 725.

SECTION III

HOLOGRAPH WILLS

726. A holograph will shall be written entirely by the testator and signed by him without the use of any mechanical process.

It is subject to no other formal requirement.

1991, c. 64, s. 726; 1992, c. 57, s. 716.

SECTION IV

WILLS MADE IN THE PRESENCE OF WITNESSES

727. A will made in the presence of witnesses is written by the testator or by a third person.

After making the will, the testator declares in the presence of two witnesses of full age that the document he is presenting is his will. He need not divulge its contents. He signs it at the end or, if he has already signed it, acknowledges his signature; he may also cause a third person to sign it for him in his presence and according to his instructions.

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

1991, c. 64, s. 727.

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

The absence of initials or a signature on each page does not prevent a will made before a notary that is not valid as a notarial will from being valid as a will made in the presence of witnesses, if the other formalities are observed.

1991, c. 64, s. 728.

729. A person who is unable to read may not make a will in the presence of witnesses, unless the will is read to the testator by one of the witnesses in the presence of the other.

The testator, in the presence of the same witnesses, declares that the document read is his will and signs it at the end or causes a third person to sign it for him in his presence and according to his instructions.

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

1991, c. 64, s. 729.

730. A person who is unable to speak but able to write may make a will in the presence of witnesses, provided he indicates in writing, otherwise than by a mechanical process, in the presence of witnesses, that the writing he is presenting is his will.

1991, c. 64, s. 730.

CHAPTER IV

TESTAMENTARY DISPOSITIONS AND LEGATEES

SECTION I

VARIOUS KINDS OF LEGACIES

731. Legacies are of three kinds: universal, by general title and by particular title.

1991, c. 64, s. 731.

732. A universal legacy entitles one or several persons to take the entire succession.

1991, c. 64, s. 732.

733. A legacy by general title entitles one or several persons to take

- (1) the ownership of an aliquot share of the succession;
- (2) a dismemberment of the right of ownership of the whole or of an aliquot share of the succession;
- (3) the ownership or a dismemberment of the right of ownership of the whole or of an aliquot share of all the immovable or movable property, private property, property in a community or acquests, or corporeal or incorporeal property.

1991, c. 64, s. 733.

734. Any legacy which is neither a universal legacy nor a legacy by general title is a legacy by particular title.

1991, c. 64, s. 734.

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

1991, c. 64, s. 735.

736. Property left by the testator for which he made no disposition or respecting which the dispositions of his will are without effect remains in his intestate succession and devolves according to the rules governing legal devolution of successions.

1991, c. 64, s. 736.

737. Testamentary dispositions made in the form of an appointment of heir, a gift or a legacy, or in other terms indicating the intentions of the testator, take effect according to the rules laid down in this Book with regard to universal legacies, legacies by general title or legacies by particular title.

Sufficient expression by the testator of a different intention takes precedence over the rules referred to in the first paragraph and the meaning ascribed to certain terms.

1991, c. 64, s. 737.

SECTION II

LEGATEES

738. A universal legatee or legatee by general title is the heir upon the opening of the succession, provided he accepts the legacy.

1991, c. 64, s. 738.

739. A legatee by particular title who accepts the legacy is not an heir, but is seised as an heir of the property of the legacy by the death of the deceased or by the event giving effect to his legacy.

He is not liable for the debts of the deceased on the property of the legacy unless the other property of the succession is insufficient to pay the debts, in which case he is liable only up to the value of the property he takes.

1991, c. 64, s. 739.

740. In order to receive his legacy, the legatee by particular title is required to have the same qualities as for succession.

He may be unworthy to receive on the same grounds as for succession; like a successor, he may apply to the court to declare an heir or a legatee by particular title unworthy.

1991, c. 64, s. 740.

741. Like a successor, a legatee by particular title has the right to deliberate and exercise his option in respect of the legacy made to him, with the same effects and according to the same rules.

1991, c. 64, s. 741.

742. The provisions respecting the petition of inheritance and its effects on the transmission of the succession are also applicable, adapted as required, to a legatee by particular title.

In all other respects, the legatee by particular title is subject to the provisions of this Book respecting legatees.

1991, c. 64, s. 742.

SECTION III

THE EFFECT OF LEGACIES

743. Fruits and revenues from the property bequeathed accrue to the legatee from the opening of the succession or the time when the disposition takes effect in his favour.

1991, c. 64, s. 743.

744. Bequeathed property is delivered, with its dependencies, in the condition it was in when the testator died.

This rule also applies to the rights attached to bequeathed securities, if they have not yet been exercised.

1991, c. 64, s. 744.

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

1991, c. 64, s. 745.

746. The bequest of an enterprise is presumed to include the operations acquired or created after the signing of the will which, at the time of death, make up an economic unit with the bequeathed enterprise.

1991, c. 64, s. 746.

747. Where the payment of a legacy is subject to a term, the legatee nevertheless has an acquired right from the death of the testator which is transmissible to his own heirs or legatees by particular title.

The right of the legatee to a legacy made under a condition is also transmissible unless the condition is of a purely personal nature.

1991, c. 64, s. 747.

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

1991, c. 64, s. 748.

749. Where, in testamentary successions, the legacy is made to all the descendants or collaterals of the testator who would have been called to his succession had he died intestate, representation takes place in the same manner and in favour of the same persons as in intestate successions, unless it is excluded by the testator, expressly or by the effect of the dispositions of the will.

There is no representation in the matter of legacies by particular title, however, unless the testator has so provided.

1991, c. 64, s. 749.

SECTION IV

LAPSE AND NULLITY OF LEGACIES

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

A legacy also lapses where the legatee refuses it, is unworthy to receive it or, again, where he dies before the fulfilment of the suspensive condition attached to it, if the condition is of a purely personal nature.

1991, c. 64, s. 750.

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

If the loss of the property occurs at the death of the testator, at the opening of the bequest or subsequently, the insurance indemnity is substituted for the property that perished.

1991, c. 64, s. 751.

752. Where a legacy charged with another legacy lapses from a cause depending on the legatee, the legacy imposed as a charge also lapses, unless the heir or legatee called to take

what was the object of the lapsed legacy is able to execute the charge.

1991, c. 64, s. 752.

753. A legacy made to the liquidator as remuneration lapses if he does not accept the office.

This is also the case where a legacy is made to remunerate the person appointed by the testator as tutor to a minor child or designated by him to act as the administrator of the property of others.

1991, c. 64, s. 753.

754. A remunerative legacy ceases to have effect where the liquidator, tutor or administrator of the property of others designated by the testator ceases to hold office as such; he has in this case a right to remuneration proportionate to the value of the legacy and the time for which he held office.

1991, c. 64, s. 754.

755. Accretion takes place in favour of the legatees by particular title where property is bequeathed to them jointly and a lapse occurs with regard to one of them.

1991, c. 64, s. 755.

756. A legacy by particular title is presumed to be made jointly if it is made by one and the same disposition and if the testator has not allotted the share of each colegatee in the bequeathed property or has allotted the colegatees equal aliquot shares.

It is also presumed to be made jointly when the entire property is bequeathed by the same act to several persons separately.

1991, c. 64, s. 756.

757. A condition that is impossible or that is contrary to public order is deemed unwritten.

Thus, a clause limiting the rights of a surviving spouse in the event of a remarriage or new civil union is deemed unwritten.

1991, c. 64, s. 757; 1992, c. 57, s. 716; 2002, c. 6, s. 41.

758. A penal clause intended to prevent an heir or a legatee by particular title from contesting the validity of the will or any part of it is deemed unwritten.

An exheredation taking the form of a penal clause intended for the same purpose is also deemed unwritten.

1991, c. 64, s. 758.

759. A legacy made to the notary who receives a will or to the spouse of the notary or to a relative in the first degree of the notary is without effect; this does not affect the other dispositions of the will.

1991, c. 64, s. 759; 2002, c. 19, s. 15.

760. A legacy made to a witness, even a supernumerary, is without effect, but this does not affect the other dispositions of the will.

The same is true of that part of the legacy made to the liquidator or to another administrator of property of others designated in the will which exceeds his remuneration, if he acts as a witness.

1991, c. 64, s. 760; 2002, c. 19, s. 15.

761. A legacy made to the owner, a director or an employee of a health or social services establishment who is neither the spouse nor a close relative of the testator is without effect if it was made while the testator was receiving care or services from the establishment.

A legacy made to a member of a foster family while the testator was residing with that family is also without effect.

1991, c. 64, s. 761; 2002, c. 19, s. 15.

762. A legacy of property of another is without effect, unless it appears that the intention of the testator was to oblige the heir to obtain the bequeathed property for the legatee by particular title.

1991, c. 64, s. 762; 2002, c. 19, s. 15.

CHAPTER V

REVOCATION OF WILLS AND LEGACIES

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

1991, c. 64, s. 763.

764. A legacy made to the spouse before a divorce or the dissolution of a civil union is revoked unless the testator manifested, by means of testamentary dispositions, the intention of benefitting the spouse despite that possibility.

Revocation of the legacy entails revocation of the designation of the spouse as liquidator of the succession.

The same rules apply if the marriage or civil union is declared null during the lifetime of the spouses.

1991, c. 64, s. 764; 2002, c. 6, s. 42.

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

A revocation that does not specifically refer to the revoked act is nonetheless express.

1991, c. 64, s. 765.

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

1991, c. 64, s. 766.

767. The destruction, tearing or erasure of a holograph will or of a will made in the presence of witnesses entails revocation if it is established that this was done deliberately by the testator or on his instructions. Similarly, the erasure of any disposition of a will entails revocation of the legacy made by that disposition.

Revocation is entailed also where the testator was aware of the destruction or loss of the will and could have replaced it.

1991, c. 64, s. 767.

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

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

1991, c. 64, s. 768.

769. Alienation of bequeathed property, even when forced or made under a resolutive condition or by exchange, also entails revocation with regard to everything that has been alienated, unless the testator provided otherwise.

Revocation subsists even if the alienated property has returned into the patrimony of the testator, unless a contrary intention is proved.

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

1991, c. 64, s. 769.

770. Revocation of a previous express or tacit revocation does not revive the original disposition, unless the testator manifested a contrary intention or unless such intention is apparent from the circumstances.

1991, c. 64, s. 770.

771. If, owing to circumstances unforeseeable at the time of the acceptance of the legacy, the execution of a charge becomes impossible or too burdensome for the heir or the legatee by particular title, the court, after hearing the interested persons, may revoke it or change it, taking account of the value of the legacy, the intention of the testator and the circumstances.

1991, c. 64, s. 771.

CHAPTER VI

PROOF AND PROBATE OF WILLS

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

The known heirs and successors shall be summoned to the probate of the will unless an exemption is granted by the court.

1991, c. 64, s. 772.

773. No person having acknowledged a will may thereafter contest its validity, although he may bring a demand to probate it.

In the case of contestation of an already probated will, the burden is on the person who avails himself of the will to prove its origin and regularity.

1991, c. 64, s. 773.

774. A will that is not produced may not be probated; it shall be reconstituted upon an action in which the heirs, the other successors and the legatees by particular title have been summoned and unless the proof of its contents, origin and regularity is conclusive and unequivocal.

1991, c. 64, s. 774.

775. Proof by testimony of a will that cannot be produced is admissible if the will has been lost or destroyed, or is in the possession of a third person, without the collusion of the person who wishes to avail himself of the will.

1991, c. 64, s. 775.

TITLE FIVE

LIQUIDATION OF SUCCESSIONS

CHAPTER I

OBJECT OF LIQUIDATION AND SEPARATION OF PATRIMONIES

776. The liquidation of an intestate or testate succession consists in identifying and calling in the successors, determining the content of the succession, recovering the claims, paying the debts of the succession, whether these be debts of the deceased, charges on the succession or debts of support, paying the legacies by particular title, rendering an account and delivering the property.

1991, c. 64, s. 776.

777. The liquidator has, from the opening of the succession and for the time necessary for liquidation, the seisin of the heirs and the legatees by particular title.

The liquidator may even claim the property against the heirs and the legatees by particular title.

The designation or replacement of the liquidator of the succession is published in the register of personal and movable real rights and, where applicable, in the land register. Registration of the act of designation or replacement is obtained by presenting a notice which refers to the act of designation or replacement, identifies the deceased and the liquidator and contains the description of the immovables concerned, if any.

1991, c. 64, s. 777; 1998, c. 51, s. 26; 1999, c. 49, s. 1.

778. The testator may modify the seisin, powers and obligations of the liquidator and provide in any other manner for the liquidation of his succession or the execution of his will. However, a clause that would in effect restrict the powers or obligations of the liquidator in such a manner as to prevent an act necessary for liquidation or to exempt him from making an inventory is deemed unwritten.

1991, c. 64, s. 778; 2002, c. 19, s. 15.

779. Where the succession is manifestly solvent, the heirs may, by mutual agreement, liquidate it without following the prescribed rules for liquidation. As a result of this decision, they are liable for payment of the debts of the succession from their own patrimony, even where the debts are of greater value than the property they take.

1991, c. 64, s. 779.

780. The patrimony of the deceased is separate from that of the heir by operation of law until the succession has been liquidated.

This separation operates in respect of both the creditors of the succession and the creditors of the heir or the legatee by particular title.

1991, c. 64, s. 780.

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

1991, c. 64, s. 781.

782. The property of the heir is used to pay the debts of the succession only in the case where the heir is liable for debts of greater value than the property he takes and the property of the succession is insufficient.

In that case, payment of the creditor of the succession comes only after payment of the creditor of each heir whose claim arose before the opening of the succession. However, a creditor of the heir whose claim has arisen since the opening of the succession is paid concurrently with the unpaid creditors of the succession.

1991, c. 64, s. 782.

CHAPTER II

LIQUIDATOR OF THE SUCCESSION

SECTION I

DESIGNATION AND RESPONSIBILITIES OF THE LIQUIDATOR

783. Any person fully capable of exercising his civil rights may hold the office of liquidator.

A legal person authorized by law to administer the property of others may hold the office of liquidator.

1991, c. 64, s. 783.

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

1991, c. 64, s. 784.

785. The office of liquidator devolves of right to the heirs unless otherwise provided by a testamentary disposition; the heirs, by majority vote, may designate the liquidator and provide the mode of his replacement.

1991, c. 64, s. 785.

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

A person designated by a testator to liquidate the succession or execute his will has the quality of liquidator whether he was designated as administrator of the succession, testamentary executor or otherwise.

1991, c. 64, s. 786.

787. Persons holding the office of liquidator together shall act in concert, unless exempted therefrom by the will or, in the absence of a testamentary disposition, by the heirs.

If one of the liquidators is prevented from acting, the others may perform alone acts of a conservatory nature and acts requiring dispatch.

1991, c. 64, s. 787.

788. The court may, on the application of an interested person, designate or replace a liquidator failing agreement among the heirs or if it is impossible to appoint or replace the liquidator.

1991, c. 64, s. 788.

789. The liquidator is entitled to the reimbursement of the expenses incurred in fulfilling his office.

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

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

1991, c. 64, s. 789.

790. The liquidator is not bound to take out insurance or to furnish other security guaranteeing the performance of his obligations, unless the testator or the majority of the heirs demand it or the court orders it on the application of any interested person who establishes the need for such a measure.

If a liquidator required to furnish security fails or refuses to do so, he forfeits his office, unless exempted by the court.

1991, c. 64, s. 790.

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

During the proceedings, the liquidator continues to hold office unless the court decides to designate an acting liquidator.

1991, c. 64, s. 791.

792. Where the liquidator is not designated, delays to accept or decline the office or is to be replaced, any interested person may apply to the court to have seals affixed, an inventory made, an acting liquidator appointed or any other order rendered which is necessary to preserve his rights. These measures benefit all the interested persons but create no

preference among them.

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

1991, c. 64, s. 792.

793. Acts performed by a person who, in good faith, believed he was liquidator of the succession are valid and may be set up against all persons.

1991, c. 64, s. 793.

SECTION II

INVENTORY OF THE PROPERTY

794. The liquidator is bound to make an inventory, in the manner prescribed in the Title on Administration of the Property of Others.

1991, c. 64, s. 794.

795. Closure of the inventory is published in the register of personal and movable real rights by registration of a notice identifying the deceased and indicating the place where the inventory may be consulted by interested persons.

The notice is also published in a newspaper circulated in the locality where the deceased had his last known address.

1991, c. 64, s. 795.

796. The liquidator informs the heirs, the successors who have not yet exercised their option, the legatees by particular title and the known creditors of the registration of the notice of closure and of the place where the inventory may be consulted, and transmits a copy of the inventory to them if that can easily be done.

1991, c. 64, s. 796.

797. The creditors of the succession, the heirs, the successors and the particular legatees may contest the inventory or any item in it; they may also concur on the revision of the inventory or apply for the making of a new inventory.

1991, c. 64, s. 797.

798. Where an inventory has already been made by an heir or another interested person, the liquidator shall verify it. He shall also ascertain that the notice of closure has been registered and that everyone who should be informed has been informed.

1991, c. 64, s. 798.

799. The liquidator may be exempted from making an inventory, but only with the consent

of all the heirs and successors.

If they give their consent, the heirs, and the successors having by that fact become heirs, are liable for the debts of the succession beyond the value of the property they take.

1991, c. 64, s. 799.

800. Where the heirs, knowing that the liquidator refuses or is neglecting to make the inventory, themselves neglect, for sixty days following the expiration of the six month period for deliberation, either to proceed to the inventory or to apply to the court to replace the liquidator or to enjoin him to proceed to the inventory, they are liable for the debts of the succession beyond the value of the property they take.

1991, c. 64, s. 800.

801. Heirs who, before the inventory, mingle the property of the succession with their personal property, unless the property was already mingled before the death, such as in the case of cohabitation, are likewise liable for the debts of the succession beyond the value of the property they take.

If the mingling is done after the inventory but before the end of the liquidation, they are personally liable for the debts up to the value of the mingled property.

1991, c. 64, s. 801.

SECTION III

FUNCTIONS OF THE LIQUIDATOR

802. The liquidator acts in respect of the property of the succession as an administrator of the property of others charged with simple administration.

1991, c. 64, s. 802.

803. The liquidator shall make a search to ascertain whether the deceased made a will.

If the deceased made a will, the liquidator causes the will to be probated and takes all the necessary steps for its execution.

1991, c. 64, s. 803.

804. The liquidator administers the succession. He shall realize the property of the succession to the extent necessary to pay the debts and the legacies by particular title.

To do this, he may alienate, alone, movable property that is perishable, likely to depreciate rapidly or expensive to preserve. He may also alienate the other property of the succession with the consent of the heirs or, failing that, the authorization of the court.

1991, c. 64, s. 804.

805. A liquidator who has an action to bring against the succession gives notice thereof to the Public Curator. The latter acts by virtue of his office as liquidator ad hoc, unless the heirs or the court designate another person.

1991, c. 64, s. 805.

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

1991, c. 64, s. 806.

807. Where the succession is manifestly solvent, the liquidator, after ascertaining that all the creditors and legatees by particular title can be paid, may pay advances to the creditors of support and to the heirs and legatees by particular title of sums of money. The advances are deducted from the shares of those who receive them.

1991, c. 64, s. 807.

CHAPTER III

PAYMENT OF DEBTS AND OF LEGACIES BY PARTICULAR TITLE

SECTION I

PAYMENTS BY THE LIQUIDATOR

808. If the property of the succession is sufficient to pay all the creditors and all the legatees by particular title and if provision is made to pay the claims that are the subject of proceedings, the liquidator pays the known creditors and known legatees by particular title as and when they present themselves.

The liquidator pays the ordinary public utility bills and pays the outstanding debts as and when they become due or according to the agreed terms and conditions.

1991, c. 64, s. 808.

809. The liquidator pays, in the same manner as any other debt of the succession, the compensatory allowance to the surviving spouse and any other debt resulting from the liquidation of the patrimonial rights of the married or civil union spouses, as agreed between the heirs, the legatees by particular title and the spouse or, failing such agreement, as determined by the court.

1991, c. 64, s. 809; 2002, c. 6, s. 43.

810. Where the succession is not manifestly solvent, the liquidator may not pay the debts of the succession or the legacies by particular title until the expiry of sixty days from registration of the notice of closure of inventory or from the exemption from making an

inventory.

The liquidator may pay the ordinary public utility bills and the debts in urgent need of payment before the expiry of that time, however, if circumstances require it.

1991, c. 64, s. 810.

811. If the property of the succession is insufficient, the liquidator may not pay any debt or any legacy by particular title before drawing up a full statement thereof, giving notice thereof to the interested persons and obtaining homologation by the court of a payment proposal which contains a provision for a reserve for the payment of any future judgment.

1991, c. 64, s. 811.

812. Where the property of the succession is insufficient, the liquidator, in accordance with his payment proposal, first pays the preferred or hypothecary creditors, according to their rank; next, he pays the other creditors, except with regard to their claims for support, and, if he is unable to repay them fully, he pays them pro rata to their claims.

If property remains after the creditors have been paid, the liquidator pays the creditors of support, pro rata to their claims if he is unable to pay them fully, and he then pays the legatees by particular title.

1991, c. 64, s. 812.

813. The liquidator may alienate property bequeathed as legacies by particular title or reduce the legacies by particular title if the other property of the succession is insufficient to pay all the debts.

The alienation or reduction is effected in the order and in the proportions agreed by the legatees. Failing agreement, the liquidator first reduces the legacies not having preference under the will nor involving determined things, pro rata to their value. Where the property is still insufficient, he alienates the objects of legacies of determined things, then the objects of legacies having preference, or reduces such legacies pro rata to their value.

The legatees may always agree to another mode of settlement or be relieved by giving back their legacies or equivalent value.

1991, c. 64, s. 813.

814. If the property of the succession is insufficient to pay all the legatees by particular title, the liquidator, in accordance with his payment proposal, first pays those having preference under the will and then the legatees of an individual property. The other legatees then incur the reduction of their legacies pro rata, and the remainder is partitioned among them pro rata to the value of each legacy.

1991, c. 64, s. 814.

SECTION II

ACTION OF CREDITORS AND LEGATEES BY PARTICULAR TITLE

815. Known creditors and legatees by particular title who have been neglected in the payments made by the liquidator have, apart from their action in damages against the liquidator, an action against the heirs who have received advances and against the legatees by particular title paid to their detriment.

The creditors also have a subsidiary action against the other creditors in proportion to their claims, taking account of causes of preference.

1991, c. 64, s. 815.

816. Creditors and legatees by particular title who, remaining unknown, do not present themselves until after the payments have been regularly made have no action against the heirs who have received advances and against the legatees by particular title paid to their detriment unless they prove that they had a serious reason for not presenting themselves in due time.

In no case do they have an action if they present themselves after the expiry of three years from the discharge of the liquidator, or any preference over the personal creditors of the heirs or legatees.

1991, c. 64, s. 816.

817. Where the reserve provided for in a payment proposal is insufficient, the creditor has, for the payment of his share of the outstanding claim, an action against the heirs who have received advances and legatees by particular title up to the amount they received and a subsidiary action against the other creditors, in proportion to their claims, taking account of causes of preference.

1991, c. 64, s. 817.

818. A hypothecary creditor having an outstanding claim preserves, in addition to his personal action, his hypothecary rights against the person who received the hypothecated property.

1991, c. 64, s. 818.

CHAPTER IV

END OF LIQUIDATION

SECTION I

ACCOUNT OF THE LIQUIDATOR

819. Liquidation is complete when the known creditors and the known legatees by particular title have been paid or when payment of their claims and legacies is otherwise

settled or assumed by heirs or legatees by particular title. It is also complete when the assets are exhausted.

It ends on the discharge of the liquidator.

1991, c. 64, s. 819.

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

The final account indicates the debts and legacies left unpaid, those guaranteed by security or assumed by heirs or legatees by particular title and those whose payment is settled otherwise, specifying the mode of payment for each. Where applicable, it establishes the reserves needed for the satisfaction of future judgments.

The liquidator shall append a proposal for partition to his account if that is required by the will or the majority of the heirs.

1991, c. 64, s. 820.

821. The liquidator, at any time and with the concurrence of all the heirs, may render an amicable account without judicial formalities. The cost of rendering the account is borne by the succession.

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

1991, c. 64, s. 821.

822. After acceptance of the final account, the liquidator is discharged of his administration and makes delivery of the property to the heirs.

Closure of the account is published in the register of personal and movable real rights by registration of a notice identifying the deceased and indicating the place where interested persons may consult the account.

1991, c. 64, s. 822.

SECTION II

OBLIGATIONS OF HEIRS AND LEGATEES BY PARTICULAR TITLE AFTER LIQUIDATION

823. The sole heir to a succession is liable, up to the value of the property he takes, for all the debts not paid by the liquidator. However, the creditors and legatees by particular title who do not present themselves until after the payments have been regularly made have no preference over the personal creditors of the heir.

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

debts.

1991, c. 64, s. 823.

824. The legatee by general title of a usufruct is solely liable to the creditors for the debts left unpaid by the liquidator, even for the capital, proportionately to what he receives, and also for hypothecs charged on any property he has received.

The relative contributions of the legatee by general title of the usufruct and of the bare owner to the debts are established according to the rules prescribed in the Book on Property.

1991, c. 64, s. 824.

825. The legatee by general title of a usufruct of the entire succession is, without recourse against the bare owner, liable for payment of any annuities or support established by the testator.

1991, c. 64, s. 825.

826. The heirs are liable, as in the case of payment of the debts, for payment of the legacies by particular title left unpaid by the liquidator, but never for more than the value of the property they take.

If a legacy is imposed on a specific heir, however, the action of the legatee by particular title does not lie against the others.

1991, c. 64, s. 826.

827. The legatees by particular title are liable for payment of the debts and legacies left unpaid by the liquidator only where the property falling to the heirs is insufficient.

Where a legacy by particular title is made jointly to several legatees, each of them is liable for the debts and legacies only in proportion to his share in the bequeathed property, subject to the rules on indivisible debts.

1991, c. 64, s. 827.

828. When a legacy by particular title includes a universality of assets and liabilities, the legatee is solely liable for payment of the debts connected with the universality, subject to the subsidiary action of the creditors against the heirs and the other legatees by particular title where the property of the universality is insufficient.

1991, c. 64, s. 828.

829. An heir or a legatee by particular title who has paid part of the debts and legacies in excess of his share has an action against his coheirs or colegatees for the reimbursement of the excess over his share. His action lies, however, only for the share that each of them ought to have paid individually, even if he is subrogated to the rights of the person who was paid.

1991, c. 64, s. 829.

830. If one of the coheirs or colegatees is insolvent, his share in the payment of the debts or in the reduction of the legacies is divided among his coheirs or colegatees in proportion to their respective shares, unless one of the coheirs or colegatees agrees to bear the entire amount.

1991, c. 64, s. 830.

831. A usufruct established on bequeathed property is borne without recourse by the legatee of the bare ownership.

Similarly, a servitude is borne without recourse by the legatee of the property charged with it.

1991, c. 64, s. 831.

832. Where the rights of action of the unpaid creditors or legatees by particular title are exercised before partition, account shall be taken, in the composition of the shares, of the actions of the heirs or legatees against their coheirs or colegatees for the amounts they paid in excess of their shares.

Where the rights of action of the unpaid creditors or legatees are exercised after partition, those of the heirs or legatees who paid more than their share are exercised, where such is the case, according to the rules applicable to the warranty of co-partitioners, unless the act of partition stipulates otherwise.

1991, c. 64, s. 832.

833. The testator may change the manner and proportion in which the law holds his heirs and legatees by particular title liable for payment of the debt and imposes reduction of the legacies on them.

The changes may not be set up against the creditors; they operate only between the heirs and the legatees by particular title.

1991, c. 64, s. 833.

834. An heir having assumed payment of the debts of the succession beyond the value of the property he takes or being liable for them may be held liable on his personal property for his share of the debts left unpaid.

1991, c. 64, s. 834.

835. An heir having assumed payment of the debts of the succession or being liable for them under the rules of this title may, if he was in good faith, move that the court reduce his liability or limit it to the value of the property he has taken if new circumstances substantially change the extent of his liability, including, but not limited to, his discovery of

new facts, or the coming forward of a creditor of whose existence he could not have been aware when he assumed the liability.

1991, c. 64, s. 835.

TITLE SIX

PARTITION OF SUCCESSIONS

CHAPTER I

RIGHT TO PARTITION

836. Partition may not take place or be applied for before the liquidation is terminated.

1991, c. 64, s. 836.

837. The testator, for a serious and legitimate reason, may order partition wholly or partly deferred for a limited time. He may also order it deferred if, to carry out his intentions fully, it is necessary that the powers and obligations of the liquidator continue to be held under another title.

1991, c. 64, s. 837.

838. If all the heirs agree, partition is made in accordance with the proposal appended to the final account of the liquidator; otherwise, partition is made as they see best.

If the heirs disagree, partition may not take place except under the conditions laid down in Chapter II and in the forms required by the Code of Civil Procedure.

1991, c. 64, s. 838.

839. Notwithstanding an application for partition, undivided ownership may be continued of a family enterprise that had been operated by the deceased, or of the stocks, shares or other securities connected with the enterprise where the deceased was the principal partner or shareholder.

1991, c. 64, s. 839.

840. Undivided ownership may also be continued of the family residence or of movable property serving for the use of the household, even where a right of ownership, usufruct or use is awarded to the surviving married or civil union spouse.

1991, c. 64, s. 840; 2002, c. 6, s. 44.

841. An heir who before the death actively participated in the operation of the enterprise or lived in the family residence may make an application to the court for the continuance of undivided ownership.

1991, c. 64, s. 841.

842. When adjudicating upon an application for the continuance of undivided ownership, the court takes into account the testamentary dispositions, as well as the existing interests and means of livelihood which the family and the heirs draw from the undivided property; in all cases, the agreements among the partners or shareholders to which the deceased was a party are respected.

1991, c. 64, s. 842.

843. On the application of an heir, the court may, to avoid a loss, stay the immediate partition of the whole or part of the property and continue the undivided ownership of it.

1991, c. 64, s. 843.

844. Continuance of undivided ownership takes place upon the conditions fixed by the court but may not be granted for a duration of more than five years except with the agreement of all the interested persons.

It may be renewed until the death of the married or civil union spouse or until the majority of the youngest child of the deceased.

1991, c. 64, s. 844; 2002, c. 6, s. 45.

845. The court may order partition where the causes that justified the continuance of undivided ownership have ceased or where undivided ownership has become intolerable or presents too great a risk for the heirs.

1991, c. 64, s. 845.

846. If an application for the continuance of undivided ownership contemplates a particular item of property or a group of properties, nothing prevents proceeding to partition of the residue of the property of the succession. Furthermore, the heirs may always satisfy an heir who objects to the continuance of undivided ownership by paying his share themselves or granting him, after evaluation, other property of the succession.

1991, c. 64, s. 846.

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

1991, c. 64, s. 847.

848. Every heir may exclude from the partition a person who is not an heir but to whom another heir transferred his right in the succession, by paying him the value of the right at the time of the redemption and his disbursements for costs related to the transfer.

1991, c. 64, s. 848.

CHAPTER II

MODES OF PARTITION

SECTION I

COMPOSITION OF SHARES

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

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

1991, c. 64, s. 849.

850. If the undivided shares are equal, as many shares are composed as there are heirs or partitioning roots.

If the undivided shares are unequal, as many shares are composed as necessary to allow a drawing of lots.

1991, c. 64, s. 850.

851. In composing the shares, account shall be taken of the testamentary dispositions, particularly those charging certain heirs with payment of debts or legacies, as well as the rights of action the heirs have against each other for the amounts they paid in excess of their shares; account shall also be taken of the rights of the surviving married or civil union spouse, the applications for allotment by preference, the contestations and, where such is the case, the reserve funds for satisfying future judgments.

Consideration may also be given to, among other things, the fiscal consequences of the allotments, the intention shown by certain heirs to take charge of certain debts or the convenience of the mode of allotment.

1991, c. 64, s. 851; 2002, c. 6, s. 46.

852. In composing the shares, immovables should not be broken up, nor should enterprises be divided.

So far as the breaking up of immovables and the division of enterprises can be avoided, each share shall, as far as possible, be composed of movable or immovable property and rights or claims of equivalent value.

Any inequality in the value of the shares is compensated by a payment in money.

1991, c. 64, s. 852.

853. Undivided owners making an amicable partition compose the shares as they see fit

and reach a consensus on their allotment or on a drawing of lots for them.

If they consider it necessary to sell the property to be partitioned or some of it, they also reach a consensus on the terms and conditions of sale.

1991, c. 64, s. 853.

854. If the undivided owners fail to agree on the composition of the shares, these are composed by an expert designated by the court; if the disagreement has to do with the allotment of the shares, it is made by a drawing of lots.

Before the drawing, each undivided owner may contest the composition of the shares.

1991, c. 64, s. 854.

SECTION II

PREFERENTIAL ALLOTMENTS AND CONTESTATION

855. Each heir receives his share of the property of the succession in kind, and may apply for the allotment of a particular thing or share by way of preference.

1991, c. 64, s. 855.

856. The surviving married or civil union spouse may, in preference to any other heir, require that the family residence or the rights conferring use of it, together with the movable property serving for the use of the household, be placed in his or her share.

If the value of the property exceeds the share due to the spouse, he or she keeps the property, subject to a payment in money as compensation.

1991, c. 64, s. 856; 2002, c. 6, s. 47.

857. Subject to the rights of the surviving married or civil union spouse, if several heirs apply for the allotment, by preference, of the immovable that served as the residence of the deceased, the person who was living in it has preference over the others.

1991, c. 64, s. 857; 2002, c. 6, s. 48.

858. Notwithstanding any objection or application for an allotment by preference presented by another co-partitioner, the enterprise or the capital shares, stocks or other securities connected with the enterprise are allotted by preference to the heir who was actively participating in the operation of the enterprise at the time of the death.

1991, c. 64, s. 858.

859. If several heirs exercise the same right of preference or an application for an allotment is disputed, the contestation is settled by a drawing of lots or, if it concerns the allotment of the residence, the enterprise or the securities connected with the enterprise, by the court. In

this case, account is taken of, among other things, the interests involved, the reasons for the preference of each party or the degree of his participation in the enterprise or in the upkeep of the residence.

1991, c. 64, s. 859.

860. Where the contestation among the co-partitioners is over the determination or payment of an amount of money as compensation, the court determines it and may, if necessary, fix the appropriate terms and conditions of guarantee and payment in the circumstances.

1991, c. 64, s. 860.

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

1991, c. 64, s. 861.

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

1991, c. 64, s. 862.

863. If the interested persons cannot agree, the court may, where applicable, designate experts to evaluate the property, order the sale of the property that cannot conveniently be partitioned or allotted and fix the terms and conditions of sale; or it may order a stay of partition for the time it indicates.

1991, c. 64, s. 863.

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

1991, c. 64, s. 864.

SECTION III

DELIVERY OF TITLES

865. After partition, the titles common to the entire inheritance or to a part of it are delivered to the person chosen by the heirs to act as depositary, on the condition that he assist the co-partitioners in this matter at their request. Failing agreement on the choice, it is made by a drawing of lots.

1991, c. 64, s. 865.

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

1991, c. 64, s. 866.

CHAPTER III

RETURN

SECTION I

RETURN OF GIFTS AND LEGACIES

867. With a view to partition, each coheir is bound to return to the mass only what he has received from the deceased by gift or by will under an express obligation to return it.

A successor who renounces the succession is under no obligation to make any return.

1991, c. 64, s. 867.

868. A person who represents another in the succession is bound to return what the person represented would have had to return, in addition to what he is bound to return in his own right.

A return is due even if the person who represents the other has renounced the succession of the person represented.

1991, c. 64, s. 868.

869. A return is made only to the succession of the donor or of the testator.

It is due only from one coheir to another and is not due to the legatees by particular title or to the creditors of the succession.

1991, c. 64, s. 869.

870. A return is made by taking less.

Any provision requiring the heir to make a return in kind is without effect. However, the heir may elect to make the return in kind if he still owns the property, unless he has charged it with a usufruct, servitude, hypothec or other real right.

1991, c. 64, s. 870; 2002, c. 19, s. 15.

871. Each coheir to whom a return by taking less is due pre-takes from the mass of the succession property equal in value to the amount of the return.

As far as possible, pre-takings are made in property of the same kind and quality as the property due to be returned.

If it is impossible to pre-take in the manner described, the heir returning may either pay the cash value of the property received or allow each coheir to pre-take other equivalent property from the mass.

1991, c. 64, s. 871.

872. A return by taking less may also be made by debiting the cash value of the property received to the share of the heir.

1991, c. 64, s. 872.

873. Unless otherwise provided in the gift or will, property returned by taking less is valued at the time of partition if it is still in the hands of the heir, or on the date of alienation if it was alienated before partition.

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

1991, c. 64, s. 873.

874. The value of property returned by taking less or in kind shall be reduced by the increase in value of the property resulting from the expenditures or personal initiative of the person returning it.

It is also reduced by the amount of the necessary disbursements.

Conversely, the value is increased by the decrease in value resulting from the actions of the person making the return.

1991, c. 64, s. 874.

875. The heir is entitled to retain the property due to be returned in kind until he has been reimbursed the amounts he is owed.

1991, c. 64, s. 875.

876. An heir is bound to return property whose loss results from his acts or omissions; he is not bound to do so if the loss results from a superior force.

In either case, he shall return any indemnity paid to him for the loss of the property.

1991, c. 64, s. 876.

877. The co-partitioners may agree that property affected by a hypothec or other real right be returned in kind; the return is then made without prejudice to the holder of the right. The obligation resulting therefrom is, in the partition of the succession, charged against the person who makes the return.

1991, c. 64, s. 877.

878. The fruits and revenues of the property given or bequeathed, if the property is returned in kind, or the interest on the amount returnable, are also returnable from the

opening of the succession.

1991, c. 64, s. 878.

SECTION II

RETURN OF DEBTS

879. An heir coming to a partition shall return to the mass the debts he owes to the deceased; he shall also return the amounts he owes to his co-partitioners by reason of the indivision.

These debts are subject to return even if they are not due when partition takes place; they are not subject to return if the testator provided for release therefrom to take effect at the opening of the succession.

1991, c. 64, s. 879.

880. If the amount in capital and interest of the debt to be returned exceeds the value of the hereditary share of the heir who is bound to make the return, the heir remains indebted for the excess and shall pay it according to the terms and conditions attached to the debt.

1991, c. 64, s. 880.

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

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

1991, c. 64, s. 881.

882. A return is made by taking less.

The pre-taking effected by the coheirs or the debiting of the amount to the share of the heir may be set up against the personal creditors of the heir who is bound to make the return.

1991, c. 64, s. 882.

883. A return shall be made of the value of the debt in capital and interest at the time of partition.

A returnable debt bears interest from the death if it precedes the death and from the date when it arose if it arose after the death.

1991, c. 64, s. 883.

CHAPTER IV

EFFECTS OF PARTITION

SECTION I

THE DECLARATORY EFFECT OF PARTITION

884. Partition is declaratory of ownership.

Each co-partitioner is deemed to have inherited, alone and directly, all the property included in his share or which devolves to him through any partial or complete partition. He is deemed to have owned the property from the death, and never to have owned the other property of the succession.

1991, c. 64, s. 884.

885. Any act the object of which is to terminate indivision between co-partitioners is equivalent to a partition, even though the act is described as a sale, an exchange, a transaction or otherwise.

1991, c. 64, s. 885.

886. Subject to the provisions respecting the administration of undivided property and the juridical relationships between an heir and his successors, acts performed by an undivided heir and real rights granted by him in property which has not been allotted to him may not be set up against any other undivided heirs who have not consented to them.

1991, c. 64, s. 886.

887. Acts validly made during indivision resulting from death retain their effect, regardless of which heir receives the property at partition.

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

1991, c. 64, s. 887.

888. The declaratory effect also applies to claims against third persons, to any assignment of these claims made during indivision by one of the coheirs and to any seizure by garnishment of the claims by the creditors of one of the coheirs.

The setting up of claims against debtors is subject to the rules of the Book on Obligations relating to assignment of debts.

1991, c. 64, s. 888.

SECTION II

WARRANTY OF CO-PARTITIONERS

889. Co-partitioners are warrantors towards each other only for the disturbances and evictions arising from a cause prior to the partition.

Each co-partitioner remains a warrantor nevertheless for any eviction caused by his personal act or omission.

1991, c. 64, s. 889.

890. The insolvency of the debtor for a claim devolving to one of the co-partitioners gives rise to a warranty in the same manner as an eviction, if the insolvency occurred prior to partition.

1991, c. 64, s. 890.

891. The warranty does not arise if the eviction has been excepted by a stipulation in the act of partition; it terminates if the co-partitioner is evicted through his own fault.

1991, c. 64, s. 891.

892. Each co-partitioner is personally bound in proportion to his share to indemnify his co-partitioner for the loss which the eviction has caused him.

The loss is valued as on the day of the partition.

1991, c. 64, s. 892.

893. If one of the co-partitioners is insolvent, the indemnity for which he is liable shall be divided proportionately between the warrantee and all the solvent co-partitioners.

1991, c. 64, s. 893.

894. The action in warranty is prescribed by three years from eviction or discovery of the disturbance, or from partition if it is caused by the insolvency of a debtor to the succession.

1991, c. 64, s. 894.

CHAPTER V

NULLITY OF PARTITION

895. Partition, even partial, may be annulled for the same causes as contracts.

A supplementary or corrective partition may be effected, however, in any case where it is to the advantage of the co-partitioners to do so.

1991, c. 64, s. 895.

896. Mere omission of undivided property does not give rise to an action in nullity, but

only to a supplementary partition.

1991, c. 64, s. 896.

897. In deciding whether lesion has occurred, the value of the property is considered as at the time of partition.

1991, c. 64, s. 897.

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

1991, c. 64, s. 898.

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BOOK FOUR

PROPERTY

TITLE ONE

KINDS OF PROPERTY AND ITS APPROPRIATION

CHAPTER I

KINDS OF PROPERTY

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

1991, c. 64, s. 899.

900. Land, and any constructions and works of a permanent nature located thereon and anything forming an integral part thereof, are immovables.

Plants and minerals, as long as they are not separated or extracted from the land, are also immovables. Fruits and other products of the soil may be considered to be movables, however, when they are the object of an act of alienation.

1991, c. 64, s. 900; 2002, c. 19, s. 15.

901. Movables incorporated with an immovable that lose their individuality and ensure the utility of the immovable form an integral part of the immovable.

1991, c. 64, s. 901.

902. Integral parts of an immovable that are temporarily detached therefrom retain their

immovable character if they are destined to be put back.

1991, c. 64, s. 902.

903. Movables which are permanently physically attached or joined to an immovable without losing their individuality and without being incorporated with the immovable are immovables for as long as they remain there.

1991, c. 64, s. 903.

904. Real rights in immovables, as well as actions to assert such rights or to obtain possession of immovables, are immovables.

1991, c. 64, s. 904.

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

1991, c. 64, s. 905.

906. Waves or energy harnessed and put to use by man, whether their source is movable or immovable, are deemed corporeal movables.

1991, c. 64, s. 906.

907. All other property, if not qualified by law, is movable.

1991, c. 64, s. .

CHAPTER II

PROPERTY IN RELATION TO ITS PROCEEDS

908. Property, according to its relation to other property, is divided into capital, and fruits and revenues.

1991, c. 64, s. 908.

909. Property that produces fruits and revenues, property appropriated for the service or operation of an enterprise, shares of the capital stock or common shares of a legal person or partnership, the reinvestment of the fruits and revenues, the price for any disposal of capital or its reinvestment, and expropriation or insurance indemnities in replacement of capital, are capital.

Capital also includes rights of intellectual or industrial property except sums derived therefrom without alienation of the rights, bonds and other loan certificates payable in cash and rights the exercise of which tends to increase the capital, such as the right to subscribe to securities of a legal person, limited partnership or trust.

1991, c. 64, s. 909.

910. Fruits and revenues are that which is produced by property without any alteration to its substance or that which is derived from the use of capital. They also include rights the exercise of which tends to increase the fruits and revenues of the property.

Fruits comprise things spontaneously produced by property or produced by the cultivation or working of land, and the produce or increase of animals.

Revenues comprise sums of money yielded by property, such as rents, interest and dividends, except those representing the distribution of capital of a legal person; they also comprise sums received by reason of the resiliation or renewal of a lease or of prepayment, or sums allotted or collected in similar circumstances.

1991, c. 64, s. 910.

CHAPTER III

PROPERTY IN RELATION TO PERSONS HAVING RIGHTS IN IT OR POSSESSION OF IT

911. A person, alone or with others, may hold a right of ownership or other real right in a property, or have possession of the property.

A person also may hold or administer the property of others or be trustee of property appropriated to a particular purpose.

1991, c. 64, s. 911.

912. The holder of a right of ownership or other real right may take legal action to have his right acknowledged.

1991, c. 64, s. 912.

913. Certain things may not be appropriated; their use, common to all, is governed by general laws and, in certain respects, by this Code.

However, water and air not intended for public utility may be appropriated if collected and placed in receptacles.

1991, c. 64, s. 913.

914. Certain other things, being without an owner, are not the object of any right, but may nevertheless be appropriated by occupation if the person taking them does so with the intention of becoming their owner.

1991, c. 64, s. 914.

915. Property belongs to persons or to the State or, in certain cases, is appropriated to a

purpose.

1991, c. 64, s. 915.

916. Property is acquired by contract, succession, occupation, prescription, accession or any other mode provided by law.

No one may appropriate property of the State for himself by occupation, prescription or accession except property the State has acquired by succession, vacancy or confiscation, so long as it has not been mingled with its other property. Nor may anyone acquire for himself property of legal persons established in the public interest that is appropriated to public utility.

1991, c. 64, s. 916.

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

1991, c. 64, s. 917.

918. Parts of the territory not owned by natural persons or legal persons nor transferred to a trust patrimony belong to the State and form part of its domain. The State is presumed to have the original titles to such property.

1991, c. 64, s. 918.

919. The beds of navigable and floatable lakes and watercourses are property of the State up to the high-water line.

The beds of non-navigable and non-floatable lakes and watercourses bordering lands alienated by the State after 9 February 1918 also are property of the State up to the high-water line; before that date, ownership of the riparian land carried with it, upon alienation, ownership of the beds of non-navigable and non-floatable watercourses.

In all cases, the law or the act of concession may provide otherwise.

1991, c. 64, s. 919.

920. Any person may travel on watercourses and lakes provided he gains legal access to them, does not encroach on the rights of the riparian owners, does not set foot on the banks and observes the conditions of use of the water.

1991, c. 64, s. 920.

CHAPTER IV

CERTAIN *DE FACTO* RELATIONSHIPS CONCERNING PROPERTY

SECTION I

POSSESSION

§1. — The nature of possession

921. Possession is the exercise in fact, by a person himself or by another person having detention of the property, of a real right, with the intention of acting as the holder of that right.

The intention is presumed. Where it is lacking, there is merely detention.

1991, c. 64, s. 921.

922. Only peaceful, continuous, public and unequivocal possession produces effects in law.

1991, c. 64, s. 922.

923. A person having begun to detain property on behalf of another or with acknowledgement of a superior domain is presumed to continue to detain it in that quality unless inversion of title is proved on the basis of unequivocal facts.

1991, c. 64, s. 923.

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

1991, c. 64, s. 924.

925. The present possessor is presumed to have been in continuous possession from the time he came into possession; he may join his possession to that of his predecessors.

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

1991, c. 64, s. 925.

926. Defective possession begins to produce effects only from the time the defect ceases.

Successors by whatever title do not suffer from defects in the possession of their predecessor.

1991, c. 64, s. 926.

927. No thief, receiver of stolen goods or defrauder may invoke the effects of possession, but his successors by whatever title may do so if they were unaware of the defect.

1991, c. 64, s. 927.

§2. — Effects of possession

928. A possessor is presumed to hold the real right he is exercising. A person contesting that presumption has the burden of proving his own right and, as the case may be, that the possessor has no title, a defective title, or defective possession.

1991, c. 64, s. 928.

929. A possessor in continuous possession for more than a year has a right of action against any person who disturbs his possession or dispossesses him in order to put an end to the disturbance or be put back into possession.

1991, c. 64, s. 929.

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

1991, c. 64, s. 930.

931. A possessor in good faith need not render account of the fruits and revenues of the property, and he bears the costs he incurred to produce them.

A possessor in bad faith shall, after compensating for the costs, return the fruits and revenues from the time he began to be in bad faith.

1991, c. 64, s. 931.

932. A possessor is in good faith if, when his possession begins, he is justified in believing he holds the real right he is exercising. His good faith ceases from the time his lack of title or the defects of his possession or title are notified to him by a civil proceeding.

1991, c. 64, s. 932.

933. A possessor may be reimbursed or indemnified according to the rules in the chapter on accession for the constructions, plantations and works he has made.

1991, c. 64, s. 933.

SECTION II

ACQUISITION OF VACANT PROPERTY

§1. — *Things without an owner*

934. Things without an owner are things belonging to no one, such as animals in the wild, or formerly in captivity but returned to the wild, and aquatic fauna, and things abandoned by their owner.

Movables of slight value or in a very deteriorated condition that are left in a public place, including a public road or a vehicle used for public transportation, are deemed abandoned

things.

1991, c. 64, s. 934; 2002, c. 19, s. 15.

935. A movable without an owner belongs to the person who appropriates it for himself by occupation.

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

1991, c. 64, s. 935.

936. An immovable without an owner belongs to the State. Any person may nevertheless acquire it by natural accession or prescription unless the State has possession of it or is declared the owner of it by a notice of the Public Curator entered in the land register.

1991, c. 64, s. 936.

937. Things without an owner which the State appropriates for itself are administered by the Public Curator, who disposes of them according to law.

1991, c. 64, s. 937.

938. Treasure belongs to the finder if he finds it on his own land; if it is found on the land of another, one-half belongs to the owner of the land and one-half to the finder, unless the finder was acting for the owner.

1991, c. 64, s. 938.

§2. — *Lost or forgotten movables*

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

The movable may not be acquired by occupation, but may be prescribed by the person who detains it, as may the price subrogated thereto.

1991, c. 64, s. 939.

940. The finder of a thing shall attempt to find its owner; if he finds him, he shall return it to him.

1991, c. 64, s. 940.

941. The finder of a lost thing, in order to acquire, by prescription, ownership of it or of the price subrogated to it, shall declare the fact that he has found it to a peace officer, to the municipality in whose territory it was found or to the person in charge of the place where it was found.

He may then, at his option, keep the thing, dispose of it in the manner of a person having detention or hand it over for detention to the person to whom he made the declaration.

1991, c. 64, s. 941.

942. The holder of a found thing, including the State or a municipality, may sell it if it is not claimed within sixty days.

The sale of the thing is held by auction and on the expiry of not less than ten days after publication of a notice of sale in a newspaper circulated in the locality where the thing was found, stating the nature of the thing and indicating the place, day and hour of the sale.

The holder may dispose of the thing immediately, however, if it is perishable. Also, if there is no bidder at the auction, he may sell the thing by agreement, give it to a charitable institution or, if it is impossible to dispose of it in this way, destroy it.

1991, c. 64, s. 942.

943. The State or a municipality may, in the manner of the holder of a found thing, sell movable property in its hands by auction, without further delay than that required for publication, in the following cases:

- (1) the owner of the property claims it but neglects or refuses to reimburse the holder for the cost of administration of the property within sixty days of claiming it;
- (2) several persons claim the property as owner, but none of them establishes a clear title or takes legal action to establish it within the sixty days or more allotted to him;
- (3) a movable deposited in the office of a court is not claimed by its owner within sixty days from notice given him to fetch it or, if it has not been possible to give him any notice, within six months from the final judgment or from the discontinuance of the proceedings.

1991, c. 64, s. 943.

944. Where a thing that has been entrusted for safekeeping, work or processing is not claimed within ninety days from completion of the work or the agreed time, it is considered to be forgotten and the holder, after having given notice of the same length of time to the person who entrusted him with the thing, may dispose of it.

1991, c. 64, s. 944.

945. The holder of a thing entrusted but forgotten disposes of it by auction sale as in the case of a found thing, or by agreement. He may also give a thing that cannot be sold to a charitable institution or, if that is not possible, dispose of it as he sees fit.

1991, c. 64, s. 945.

946. The owner of a lost or forgotten thing may revendicate it, so long as his right of

ownership has not been prescribed, by offering to pay the cost of its administration and, where applicable, the value of the work done. The holder of the thing may retain it until payment.

If the thing has been alienated, the owner's right is exercised, notwithstanding article 1714, only against what is left of the price of sale, after deducting the cost of its administration and alienation and the value of the work done.

1991, c. 64, s. 946.

TITLE TWO

OWNERSHIP

CHAPTER I

NATURE AND EXTENT OF THE RIGHT OF OWNERSHIP

947. Ownership is the right to use, enjoy and dispose of property fully and freely, subject to the limits and conditions for doing so determined by law.

Ownership may be in various modes and dismemberments.

1991, c. 64, s. 947.

948. Ownership of property gives a right to what it produces and to what is united to it, naturally or artificially, from the time of union. This right is called a right of accession.

1991, c. 64, s. 948; 1992, c. 57, s. 716.

949. The fruits and revenues of property belong to the owner, who bears the costs he incurred to produce them.

1991, c. 64, s. 949.

950. The owner of the property assumes the risks of loss.

1991, c. 64, s. 950.

951. Ownership of the soil carries with it ownership of what is above and what is below the surface.

The owner may make such constructions, works or plantations above or below the surface as he sees fit; he is bound to respect, among other things, the rights of the State in mines, sheets of water and underground streams.

1991, c. 64, s. 951.

952. No owner may be compelled to transfer his ownership except by expropriation

according to law for public utility and in consideration of a just and prior indemnity.

1991, c. 64, s. 952.

953. The owner of property has a right to revendicate it against the possessor or the person detaining it without right, and may object to any encroachment or to any use not authorized by him or by law.

1991, c. 64, s. 953.

CHAPTER II

ACCESSION

SECTION I

IMMOVABLE ACCESSION

954. Accession of movable or immovable property to an immovable may be voluntary or involuntary. Accession is artificial in the first case, natural in the second.

1991, c. 64, s. 954.

§1. — *Artificial accession*

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

1991, c. 64, s. 955.

956. The owner of an immovable becomes the owner by accession of the constructions, works or plantations he has made with materials which do not belong to him, but he is bound to pay the value, at the time they were incorporated, of the materials used.

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

1991, c. 64, s. 956.

957. The owner of an immovable acquires by accession ownership of the constructions, works or plantations made on his immovable by a possessor, whether the disbursements were necessary, useful or for amenities.

1991, c. 64, s. 957.

958. The owner shall reimburse the possessor for the necessary disbursements, even if the constructions, works or plantations no longer exist.

If the possessor is in bad faith, however, compensation may be claimed for the fruits and

revenues collected, after deducting the costs incurred to produce them.

1991, c. 64, s. 958.

959. The owner shall reimburse the useful disbursements made by a possessor in good faith, if the constructions, works or plantations still exist; he may also, if he chooses, pay him compensation equal to the increase in value.

The owner may, on the same conditions, reimburse the useful disbursements made by the possessor in bad faith; he may in that case effect compensation for the fruits and revenues owed to him by the possessor.

The owner may also compel the possessor in bad faith to remove the constructions, works or plantations and to restore the place to its former condition; if such restoration is impossible, the owner may keep them without compensation or compel the possessor to remove them.

1991, c. 64, s. 959.

960. The owner may compel the possessor to acquire the immovable and to pay him its value if the useful disbursements made are costly and represent a considerable proportion of that value.

1991, c. 64, s. 960.

961. A possessor in good faith who has made disbursements for amenities for himself may, as the owner chooses, either remove the constructions, works or plantations he has made, if that can be done advantageously without causing damage to the place, or abandon them.

If he abandons them, the owner is bound to reimburse him for either their cost or the increase in value of the immovable, whichever is less.

1991, c. 64, s. 961.

962. The owner may compel the possessor in bad faith to remove the constructions, works or plantations he has made as amenities for himself and to restore the place to its former condition; if such restoration is impossible, he may keep them without compensation or compel the possessor to remove them.

1991, c. 64, s. 962.

963. A possessor in good faith has a right to retain the immovable until he has been reimbursed for necessary or useful disbursements.

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

1991, c. 64, s. 963.

964. Disbursements made by a person detaining property are dealt with according to the

rules prescribed for disbursements made by a possessor in bad faith.

The person detaining the property is under no obligation to acquire it, however.

1991, c. 64, s. 964.

§2. — *Natural accession*

965. Alluvion becomes the property of the riparian owner.

Alluvion is the deposits of earth and augmentations which are gradually and imperceptibly formed on riparian lands of a watercourse.

1991, c. 64, s. 965.

966. Accretions left by the imperceptible recession of running water from one bank while it encroaches upon the opposite bank are acquired by the riparian owner on the bank gradually added to, and the riparian owner on the opposite bank has no claim for the lost land.

No right exists under this article in respect of accretions from the sea, which form part of the domain of the State.

1991, c. 64, s. 966.

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

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

1991, c. 64, s. 967.

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

1991, c. 64, s. 968.

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

1991, c. 64, s. 969.

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

1991, c. 64, s. 970.

SECTION II

MOVABLE ACCESSION

971. Where movables belonging to several owners have been intermingled or united in such a way as to be no longer separable without deterioration or without excessive labour and cost, the new thing belongs to the owner having contributed most to its creation by the value of the original thing or by his work.

1991, c. 64, s. 971.

972. A person having worked on or processed material which did not belong to him acquires ownership of the new thing if the work or processing is worth more than the material used.

1991, c. 64, s. 972.

973. The owner of the new thing shall pay the value of the material or labour to the person having supplied it.

If it is impossible to determine who contributed most to the creation of the new thing, the interested persons are its undivided co-owners.

1991, c. 64, s. 973.

974. The person bound to return the new thing may retain it until its owner pays him the compensation he owes him.

1991, c. 64, s. 974.

975. In unforeseen circumstances, the right of accession in respect of movable property is entirely subordinate to the principles of equity.

1991, c. 64, s. 975.

CHAPTER III

SPECIAL RULES ON THE OWNERSHIP OF IMMOVABLES

SECTION I

GENERAL PROVISION

976. Neighbours shall suffer the normal neighbourhood annoyances that are not beyond the limit of tolerance they owe each other, according to the nature or location of their land or local custom.

1991, c. 64, s. 976.

SECTION II

LIMITS AND BOUNDARIES OF LAND

977. The limits of land are determined by the titles, the cadastral plan and the boundary lines of the land, and by any other useful indication or document, if need be.

1991, c. 64, s. 977.

978. Every owner may compel his neighbour to have the boundaries between their contiguous lands determined in order to fix the boundary markers, set displaced or missing boundary markers back in place, verify ancient boundary markers or rectify the dividing line between their properties.

Failing agreement between them, the owner shall first make a demand to his neighbour to consent to having the boundaries determined and to agree upon the choice of a land surveyor to carry out the necessary operations according to the rules in the Code of Civil Procedure.

The minutes of the determination of the boundaries shall be entered in the land register.

1991, c. 64, s. 978.

SECTION III

WATERS

979. Lower land is subject to receiving water flowing onto it naturally from higher land.

The owner of lower land has no right to erect works to prevent the natural flow. The owner of higher land has no right to aggravate the condition of lower land, and is not presumed to do so if he carries out work to facilitate the natural run-off or, where his land is devoted to agriculture, he carries out drainage work.

1991, c. 64, s. 979.

980. An owner who has a spring on his land may use it and dispose of it.

He may, for his needs, use water from the lakes and ponds that are entirely on his land, taking care to preserve their quality.

1991, c. 64, s. 980.

981. A riparian owner may, for his needs, make use of a lake, the headwaters of a watercourse or any other watercourse bordering or crossing his land. As the water leaves his land, he shall direct it, not substantially changed in quality or quantity, into its regular course.

No riparian owner may by his use of the water prevent other riparian owners from exercising the same right.

1991, c. 64, s. 981.

982. Unless it is contrary to the general interest, a person having a right to use a spring, lake, sheet of water, underground stream or any running water may, to prevent the water from being polluted or used up, require the destruction or modification of any works by which the water is being polluted or dried up.

1991, c. 64, s. 982.

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

1991, c. 64, s. 983.

SECTION IV

TREES

984. Fruit that falls from a tree onto neighbouring land belongs to the owner of the tree.

1991, c. 64, s. 984.

985. If branches or roots extend over or upon an owner's land from the neighbouring land and seriously obstruct its use, the owner may request his neighbour to cut them and, if he refuses, compel him to do so.

If a tree on the neighbouring land is in danger of falling on the owner's land, he may compel his neighbour to fell the tree, or to right it.

1991, c. 64, s. 985.

986. The owner of land used for agricultural purposes may compel his neighbour to fell the trees along and not over five metres from the dividing line, if they are seriously damaging to his operations, except trees in an orchard or sugar bush and trees preserved to embellish the property.

1991, c. 64, s. 986.

SECTION V

ACCESS TO AND PROTECTION OF THE LAND OF ANOTHER

987. Every owner of land, after having been notified verbally or in writing, shall allow his neighbour access to it if that is necessary to make or maintain a construction, works or plantation on the neighbouring land.

1991, c. 64, s. 987.

988. An owner bound to give access to his land is entitled to compensation for any damage he sustains as a result of that sole fact and to the restoration of his land to its former condition.

1991, c. 64, s. 988.

989. Where a thing is carried or strays onto the land of another by the effect of a natural or superior force, the owner of that land shall allow the thing to be searched for and removed, unless he immediately searches for it himself and returns it.

The thing, whether object or animal, does not cease to belong to its owner unless he abandons the search, in which case it is acquired by the owner of the land unless he compels the owner of the thing to remove it and to restore his land to its former condition.

1991, c. 64, s. 989.

990. The owner of land shall do any repair or demolition work needed to prevent the collapse of a construction or works situated on his land that is in danger of falling onto the neighbouring land, including a public road.

1991, c. 64, s. 990.

991. Where the owner of land erects a construction or works or makes a plantation on his land, he may not disturb the neighbouring land or undermine the constructions, works or plantations situated on it.

1991, c. 64, s. 991.

992. Where an owner has, in good faith, built beyond the limits of his land on a parcel of land belonging to another, he shall, as the owner of the land he has encroached upon elects, acquire the parcel by paying him its value, or pay him compensation for the temporary loss of use of the parcel.

If the encroachment is a considerable one, causes serious damage or is made in bad faith, the owner of the land encroached upon may compel the builder to acquire his immovable and to pay him its value, or to remove the constructions and to restore the place to its former condition.

1991, c. 64, s. 992.

SECTION VI

VIEWS

993. No person may have upon the neighbouring land direct views less than one hundred and fifty centimetres from the dividing line.

This rule does not apply in the case of views on the public thoroughfare or on a public park

or in the case of panelled doors or doors with translucent glass.

1991, c. 64, s. 993; 1992, c. 57, s. 716.

994. The distance of one hundred and fifty centimetres is measured from the exterior facing of the wall where the opening is made and perpendicularly therefrom to the dividing line. In the case of a projecting window, the distance is measured from the exterior line.

1991, c. 64, s. 994.

995. A person may make fixed translucent lights in a wall that is not a common wall, even if it is less than one hundred and fifty centimetres from the dividing line.

1991, c. 64, s. 995.

996. A co-owner of a common wall has no right to make any opening in it without the agreement of the other co-owner.

1991, c. 64, s. 996.

SECTION VII

RIGHT OF WAY

997. The owner of land enclosed by that of others in such a way that there is no access or only an inadequate, difficult or impassable access to it from the public road may, if all his neighbours refuse to grant him a servitude or another mode of access, require one of them to provide him with the necessary right of way to use and exploit his land.

Where an owner claims his right under this article, he pays compensation proportionate to any damage he might cause.

1991, c. 64, s. 997.

998. Right of way is claimed from the owner whose land affords the most natural way out, taking into consideration the condition of the place, the benefit to the enclosed land and the inconvenience caused by the right of way to the land on which it is exercised.

1991, c. 64, s. 998.

999. If land is enclosed as a result of the division of land pursuant to a partition, will or contract, right of way may be claimed only from a co-partitioner, heir or contracting party, not from the owner whose land affords the most natural way out, and in this case the way is provided without compensation.

1991, c. 64, s. 999.

1000. The beneficiary of a right of way shall build and maintain all the works necessary to ensure that his right is exercised under conditions that cause the least possible damage to the

land on which it is exercised.

1991, c. 64, s. 1000.

1001. Right of way is extinguished when it ceases to be necessary for the use and exploitation of the land. The compensation is not reimbursed, but if it was payable as an annual rent or by instalments, future payments of these are no longer due.

1991, c. 64, s. 1001.

SECTION VIII

COMMON FENCES AND WORKS

1002. Any owner of land may fence it, at his own expense, with walls, ditches, hedges or any other kind of fence.

He may also require his neighbour to make one-half of or share the cost of making a fence which is suited to the situation and use made of the premises, on the dividing line to divide his land from his neighbour's land.

1991, c. 64, s. 1002.

1003. A fence on the dividing line is presumed to be common. Similarly, a wall supporting buildings on either side is presumed to be common up to the point of disjunction.

1991, c. 64, s. 1003.

1004. Any owner may cause a private wall directly adjacent to the dividing line to be rendered common by reimbursing the owner of the wall for one-half of the cost of the section rendered common and, where applicable, one-half of the value of the ground used. The cost of the wall is estimated on the date on which it was rendered common, and account is taken of its state.

1991, c. 64, s. 1004.

1005. Each owner may build against a common wall and set beams and joists against it. He shall obtain the concurrence of the other owner on how to proceed.

In case of disagreement, the owner may apply to the court to determine the means necessary to ensure that the new works infringe the rights of the other owner as little as possible.

1991, c. 64, s. 1005.

1006. The maintenance, repair and rebuilding of a common wall are at the expense of each owner in proportion to his right.

An owner who does not use the common wall may renounce his right and thereby be relieved of his obligation to share the expenses by producing a notice to that effect at the

registry office and transmitting a copy of the notice to the other owners without delay. The notice entails renunciation of the right to make use of the wall.

1991, c. 64, s. 1006.

1007. A co-owner of a common wall has a right to heighten it at his own expense after ascertaining by means of an expert appraisal that it can withstand it, and shall pay one-sixth of the cost of the heightening to the other as compensation.

If the wall cannot withstand heightening, the owner shall rebuild the entire wall at his own expense, any excess thickness going on his own side.

1991, c. 64, s. 1007.

1008. The heightened part of the wall belongs to the person who made it, and the cost of its maintenance, repair and rebuilding is his responsibility.

The neighbour who did not contribute to the heightening may nevertheless acquire common ownership of it by paying one-half of the cost of the heightening or rebuilding and, where applicable, one-half of the value of the ground provided for excess thickness. He shall also repay any compensation he has received.

1991, c. 64, s. 1008.

TITLE THREE

SPECIAL MODES OF OWNERSHIP

CHAPTER I

GENERAL PROVISIONS

1009. Ownership has two principal special modes, co-ownership and superficies.

1991, c. 64, s. 1009.

1010. Co-ownership is ownership of the same property, jointly and at the same time, by several persons each of whom is privately vested with a share of the right of ownership.

Co-ownership is called undivided where the right of ownership is not accompanied with a physical division of the property.

It is called divided where the right of ownership is apportioned among the co-owners in fractions, each comprising a physically divided private portion and a share of the common portions.

1991, c. 64, s. 1010.

1011. Superficies is ownership of the constructions, works or plantations situated on an

immovable belonging to another person, the owner of the subsoil.

1991, c. 64, s. 1011.

CHAPTER II

UNDIVIDED CO-OWNERSHIP

SECTION I

ESTABLISHMENT OF INDIVISION

1012. Indivision arises from a contract, succession or judgment or by operation of law.

1991, c. 64, s. 1012.

1013. The undivided co-owners may agree, in writing, to postpone partition of a property on expiry of the provided period of indivision.

Such an agreement may not exceed thirty years, but is renewable. An agreement exceeding thirty years is reduced to that term.

1991, c. 64, s. 1013.

1014. Indivision by agreement in respect of an immovable shall be published if it is to be set up against third persons. In particular, publication mentions the expected length of indivision, the identification of the shares of the co-owners and, where applicable, the pre-emptive rights granted or the awarding of a right of exclusive use or enjoyment of a portion of the undivided property.

1991, c. 64, s. 1014.

SECTION II

RIGHTS AND OBLIGATIONS OF UNDIVIDED CO-OWNERS

1015. The shares of undivided co-owners are presumed equal.

Each undivided co-owner has the rights and obligations of an exclusive owner as regards his share. Thus, each may alienate or hypothecate his share and his creditors may seize it.

1991, c. 64, s. 1015.

1016. Each undivided co-owner may make use of the undivided property provided he does not affect its destination or the rights of the other co-owners.

If one of the co-owners has exclusive use and enjoyment of the property, he is liable for compensation.

1991, c. 64, s. 1016.

1017. The right of accession operates to the benefit of all the undivided co-owners proportionately to their shares in the indivision. Nevertheless, where a co-owner holds a right of exclusive use or enjoyment of a portion of the undivided property, he also has exclusive use or enjoyment of property joined or incorporated with that portion.

1991, c. 64, s. 1017.

1018. The fruits and revenues of the undivided property accrue to the indivision, where there is no provisional partition and where no other agreement exists with respect to their periodic distribution. They also accrue to the indivision if they are not claimed within three years from their due date.

1991, c. 64, s. 1018.

1019. The undivided co-owners are liable proportionately to their shares for the costs of administration and the other common charges related to the undivided property.

1991, c. 64, s. 1019.

1020. Each undivided co-owner is entitled to be reimbursed for necessary disbursements he has made to preserve the undivided property. For other authorized disbursements, he is entitled, at partition, to compensation equal to the increase in value given to the property.

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

1991, c. 64, s. 1020.

1021. Partition which takes place before the time fixed by the indivision agreement may not be set up against a creditor holding a hypothec on an undivided portion of the property unless he has consented to the partition or unless his debtor preserves a right of ownership over some part of the property.

1991, c. 64, s. 1021.

1022. Any undivided co-owner, within sixty days of learning that a third person has, by onerous title, acquired the share of an undivided co-owner, may exclude him from the indivision by reimbursing him for the transfer price and the expenses he has paid. This right may be exercised only within one year from the acquisition of the share.

The right of redemption may not be exercised where the co-owners have stipulated pre-emptive rights in the indivision agreement and where such rights, if they are rights in an immovable, have been published.

1991, c. 64, s. 1022.

1023. An undivided co-owner having caused his address to be registered at the registry office may, within sixty days of being notified of the intention of a creditor to sell the share of an undivided co-owner or to take it in payment of an obligation, be subrogated to the rights of the creditor by paying him the debt of the undivided co-owner, with costs.

An undivided co-owner not having caused his address to be registered has no right of redemption against a creditor or the successors of the creditor.

1991, c. 64, s. 1023.

1024. If several undivided co-owners exercise their rights of redemption or subrogation against the share of an undivided co-owner, it is partitioned among them proportionately to their rights in the undivided property.

1991, c. 64, s. 1024.

SECTION III

ADMINISTRATION OF UNDIVIDED PROPERTY

1025. Undivided co-owners of property administer it jointly.

1991, c. 64, s. 1025.

1026. Administrative decisions are taken by a majority in number and shares of the undivided co-owners.

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

1991, c. 64, s. 1026.

1027. The undivided co-owners may appoint one of their number or another person as manager and entrust him with the administration of the undivided property.

The court may designate the manager on the motion of one of the undivided co-owners and determine his responsibilities where a majority in number and shares of the undivided co-owners cannot agree on whom to appoint, or where it is impossible to appoint or replace the manager.

1991, c. 64, s. 1027.

1028. Where one of the undivided co-owners administers the undivided property with the knowledge of the others and without objection on their part, he is presumed to have been appointed manager.

1991, c. 64, s. 1028.

1029. The manager acts alone with respect to the undivided property as administrator of the property of others charged with simple administration.

1991, c. 64, s. 1029.

SECTION IV

END OF INDIVISION AND PARTITION

1030. No one is bound to remain in indivision; partition may be demanded at any time unless it has been postponed by agreement, a testamentary disposition, a judgment, or operation of law, or unless it has become impossible because the property has been appropriated to a durable purpose.

1991, c. 64, s. 1030.

1031. Notwithstanding any agreement to the contrary, three-quarters of the undivided co-owners representing ninety per cent of the shares may terminate the undivided co-ownership of a mainly residential immovable in order to establish divided co-ownership of it.

The undivided co-owners may satisfy those who object to the establishment of divided co-ownership and who refuse to sign the declaration of co-ownership by apportioning their share to them in money; the share of each undivided co-owner is then increased in proportion to his payment.

1991, c. 64, s. 1031.

1032. On a motion by an undivided co-owner, the court, to avoid a loss, may postpone the partition of the whole or part of the property and continue the indivision for not over two years.

A decision under the first paragraph may be revised if the causes shown for continuing the indivision have ceased to exist or if the indivision has become intolerable or too high a risk for the undivided co-owners.

1991, c. 64, s. 1032.

1033. If one of the undivided co-owners objects to continuing in indivision, the others may satisfy him at any time by apportioning his share to him in kind, provided it is easily detachable from the rest of the undivided property, or in money, as he chooses.

If the share is apportioned in kind, the undivided co-owners may make the allotment least prejudicial to the exercise of their rights.

If the share is apportioned in money, the share of each undivided co-owner is increased in proportion to his payment.

1991, c. 64, s. 1033.

1034. If the undivided co-owners fail to agree on the share in kind or in money to be apportioned to one of them, an expert appraisal or a valuation is made by a person designated by all the undivided co-owners or, if they cannot agree among themselves, by the court.

1991, c. 64, s. 1034.

1035. Creditors whose claims arise from the administration are paid out of the assets before partition.

No creditor, not even a hypothecary creditor, of an undivided co-owner may demand partition, except by an indirect action where the undivided co-owner could demand it himself.

1991, c. 64, s. 1035.

1036. Indivision may be terminated by the decision of a majority in number and shares of the undivided co-owners where a substantial part of the undivided property is lost or expropriated.

1991, c. 64, s. 1036.

1037. Indivision ends by the partition or alienation of the property.

In the case of partition, the provisions relating to the partition of successions apply, adapted as required.

However, the act of partition which terminates indivision, other than indivision by succession, is an act of attribution of the right of ownership.

1991, c. 64, s. 1037.

CHAPTER III

DIVIDED CO-OWNERSHIP OF IMMOVABLES

SECTION I

ESTABLISHMENT OF DIVIDED CO-OWNERSHIP

1038. Divided co-ownership of an immovable is established by publication of a declaration under which ownership of the immovable is divided into fractions belonging to one or several persons.

1991, c. 64, s. 1038.

1039. Upon the publication of the declaration of co-ownership, the co-owners as a body constitute a legal person, the objects of which are to preserve the immovable, to maintain

and manage the common portions, to protect the rights appurtenant to the immovable or the co-ownership and to take all measures of common interest.

The legal person is called a syndicate.

1991, c. 64, s. 1039.

1040. Divided co-ownership of an immovable that is built by an emphyteutic lessee or that is subject to superficies may be established if the unexpired term of the lease or right, at the time of publication of the declaration, is over fifty years.

In cases arising under the first paragraph, each co-owner, dividedly and proportionately to the relative value of his fraction, is liable for the divisible obligations of the emphyteutic lessee or superficiary, as the case may be, towards the owner of the immovable subject to emphyteusis or superficies. The syndicate assumes the indivisible obligations.

1991, c. 64, s. 1040.

SECTION II

FRACTIONS OF CO-OWNERSHIP

1041. The relative value of each of the fractions of a divided co-ownership with reference to the value of all the fractions together is determined in consideration of the nature, destination, dimensions and location of the private portion of each fraction, but not of its use.

The relative value is specified in the declaration.

1991, c. 64, s. 1041.

1042. Those portions of the buildings and land that are the property of a specific co-owner and that are for his use alone are called the private portions.

1991, c. 64, s. 1042.

1043. Those portions of the buildings and land that are owned by all the co-owners and serve for their common use are called the common portions.

Some of these portions may nevertheless serve for the use of only one or several of the co-owners. The rules regarding the common portions apply to these common portions for restricted use.

1991, c. 64, s. 1043.

1044. The following are presumed to be common portions: the ground, yards, verandas or balconies, parks and gardens, access ways, stairways and elevators, passageways and halls, common service areas, parking and storage areas, basements, foundations and main walls of buildings, and common equipment and apparatus, such as the central heating and air-

conditioning systems and the piping and wiring, including what crosses private portions.

1991, c. 64, s. 1044.

1045. Partitions or walls that are not part of the foundations and main walls of a building but which separate a private portion from a common portion or from another private portion are presumed common.

1991, c. 64, s. 1045.

1046. Each co-owner has an undivided right of ownership in the common portions. His share of the common portions is proportionate to the relative value of his fraction.

1991, c. 64, s. 1046.

1047. Each fraction constitutes a distinct entity and may be alienated in whole or in part; the alienation includes, in each case, the share of the common portions appurtenant to the fraction, as well as the right to use the common portions for restricted use, where applicable.

1991, c. 64, s. 1047.

1048. The share of the common portions appurtenant to a fraction may not, separately from the private portion of the fraction, be the object of alienation or an action in partition.

1991, c. 64, s. 1048; 2002, c. 19, s. 15.

1049. Alienation of a divided part of a private portion is without effect unless the declaration of co-ownership and the cadastral plan have been altered prior to the alienation so as to create a new fraction, describe it, give it a separate cadastral number and determine its relative value, or to record the alterations made to the boundaries between contiguous private portions.

1991, c. 64, s. 1049; 2000, c. 42, s. 3; 2002, c. 19, s. 15.

1050. Each fraction forms a distinct entity for the purposes of real property assessment and taxation.

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

1991, c. 64, s. 1050.

1051. Notwithstanding articles 2650 and 2662, a hypothec, any additional security accessory thereto or any preferences existing at the time of registration of the declaration of co-ownership on the whole of an immovable held in co-ownership are divided among the fractions according to the relative value of each or according to any other established proportion.

1991, c. 64, s. 1051.

SECTION III

DECLARATION OF CO-OWNERSHIP

§1. — Content of the declaration

1052. A declaration of co-ownership comprises the act constituting the co-ownership, the by-laws of the immovable and a description of the fractions.

1991, c. 64, s. 1052.

1053. A constituting act of co-ownership defines the destination of the immovable, of the exclusive parts and of the common parts.

The act also specifies the relative value of each fraction, indicating how that value was determined, the share of the expenses and the number of votes attached to each fraction and provides any other agreement regarding the immovable or its private or common portions. In addition, it specifies the powers and duties of the board of directors of the syndicate and of the general meeting of the co-owners.

1991, c. 64, s. 1053.

1054. The by-laws of an immovable contain the rules on the enjoyment, use and upkeep of the private and common portions, and those on the operation and administration of the co-ownership.

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

1991, c. 64, s. 1054.

1055. A description of the fractions contains the cadastral description of the private portions and common portions of the immovable.

Such a description also contains a description of the real rights affecting or existing in favour of the immovable other than hypothecs, and additional security accessory thereto.

1991, c. 64, s. 1055.

1056. No declaration of co-ownership may impose any restriction on the rights of the co-owners except restrictions justified by the destination, characteristics or location of the immovable.

1991, c. 64, s. 1056.

1057. The by-laws of the immovable may be set up against the lessee or occupant of a private portion upon his being given a copy of the by-laws or the amendments to them by the co-owner or, if not by him, by the syndicate.

1991, c. 64, s. 1057.

1058. Unless express provision is made therefor in the act constituting the co-ownership, no fraction may be held by several persons each having a right of enjoyment periodically and successively in the fraction, nor may a fraction be alienated for that purpose.

Where the act makes provision for a periodical and successive right of enjoyment by holders, it indicates the number of fractions that may be held in this way, the occupancy periods, the maximum number of persons who may hold these fractions, and the rights and obligations of these occupants.

1991, c. 64, s. 1058.

§2. — *Registration of the declaration*

1059. A declaration of co-ownership, and any amendments made to the constituting act of co-ownership or the description of the fractions, shall be in the form of a notarial act *en minute*.

The declaration shall be signed by all the owners of the immovable, by the emphyteutic lessee or the superficiary, if any, and by all the creditors holding hypothecs on the immovable; amendments are signed by the syndicate.

1991, c. 64, s. 1059.

1060. The declaration and any amendments made to the constituting act of co-ownership or the description of the fractions are deposited in the registry office. The declaration is entered in the land register under the registration numbers of the common portions and the private portions. The amendments are entered under the registration number of the common portions only, unless they directly affect a private portion. However, it is sufficient for amendments made to the by-laws of the immovable to be filed with the syndicate.

Where applicable, the emphyteutic lessee or superficiary shall give notice of the registration to the owner of an immovable under emphyteusis or on which superficies has been established.

1991, c. 64, s. 1060.

1061. The registration of an act against a private portion is valid against the share of the common portions attached to it, without any requirement to make an entry under the registration number of the common portions.

1991, c. 64, s. 1061.

1062. The declaration of co-ownership binds the co-owners, their successors and the persons who signed it, and produces its effects towards them from the time of its registration.

1991, c. 64, s. 1062.

SECTION IV

RIGHTS AND OBLIGATIONS OF CO-OWNERS

1063. Each co-owner has the disposal of his fraction; he has free use and enjoyment of his private portion and of the common portions, provided he observes the by-laws of the immovable and does not impair the rights of the other co-owners or the destination of the immovable.

1991, c. 64, s. 1063.

1064. Each co-owner contributes in proportion to the relative value of his fraction to the expenses arising from the co-ownership and from the operation of the immovable and the contingency fund established under article 1071, although only the co-owners who use common portions for restricted use contribute to the costs resulting from those portions.

1991, c. 64, s. 1064.

1065. A co-owner who gives a lease on his private portion shall notify the syndicate and give the name of the lessee.

1991, c. 64, s. 1065.

1066. No co-owner may interfere with the carrying out, even inside his private portion, of work required for the conservation of the immovable decided upon by the syndicate or of urgent work.

Where a private portion is leased, the syndicate gives the lessee, where applicable, the notices prescribed in articles 1922 and 1931 regarding improvements and work.

1991, c. 64, s. 1066.

1067. A co-owner who suffers prejudice by the carrying out of work, through a permanent diminution in the value of his fraction, a grave disturbance of enjoyment, even if temporary, or through deterioration, is entitled to obtain compensation from the syndicate if the syndicate ordered the work or, if it did not, from the co-owners who did the work.

1991, c. 64, s. 1067.

1068. Every co-owner may, within five years from the day of registration of the declaration of co-ownership, apply to the court for a revision, for the future, of the relative value of the fractions and of the apportionment of the common expenses.

The right to apply for a revision may be exercised only if there exists, between the relative value attributed to a fraction or the share of common expenses attached thereto and the value or share that should have been determined, according to the criteria provided in the declaration of co-ownership, a difference in excess of one-tenth either in favour of another co-owner or to the prejudice of the applicant co-owner.

1991, c. 64, s. 1068.

1069. A person who acquires a fraction of divided co-ownership, by whatever means, including the exercise of a hypothecary right, is bound to pay all common expenses due in respect of that fraction at the time of the acquisition.

A person contemplating the acquisition of such a fraction may request from the syndicate of co-owners a statement of the common expenses due in respect of the fraction and the syndicate is thereupon authorized to provide the statement to him, provided the syndicate gives prior notice to the owner of the fraction or his successors; in such a case, the prospective acquirer is only bound to pay the common expenses if the statement is provided to him by the syndicate within 15 days of the request.

The statement given to the buyer is adjusted to the last annual budget of the co-owners.

1991, c. 64, s. 1069; 2002, c. 19, s. 6.

SECTION V

RIGHTS AND OBLIGATIONS OF THE SYNDICATE

1070. The syndicate keeps a register at the disposal of the co-owners containing the name and address of each co-owner and each lessee, the minutes of the meetings of the co-owners and of the board of directors and the financial statements.

It also keeps at their disposal the declaration of co-ownership, the copies of the contracts to which it is a party, a copy of the cadastral plan, the plans and specifications of the immovable built and all other documents relating to the immovable and the syndicate.

1991, c. 64, s. 1070.

1071. The syndicate establishes, according to the estimated cost of major repairs and the cost of replacement of common portions, a contingency fund to provide cash funds on a short-term basis allocated exclusively to such repairs and replacement. The syndicate is the owner of the fund.

1991, c. 64, s. 1071.

1072. Each year, the board of directors, after consultation with the general meeting of the co-owners, fixes their contribution for common expenses, after determining the sums required to meet the expenses arising from the co-ownership and the operation of the immovable, and the amounts to be paid into the contingency fund.

The contribution of the co-owners to the contingency fund is at least 5 per cent of their contribution for common expenses. In fixing the contribution, the rights of any co-owner in the common portions for restricted use may be taken into account.

The syndicate, without delay, notifies each co-owner of the amount of his contribution and

the date when it is payable.

1991, c. 64, s. 1072.

1073. The syndicate has an insurable interest in the whole immovable, including the private portions. It shall take out insurance against ordinary risks, such as fire and theft, on the whole of the immovable, except improvements made by a co-owner to his part. The amount insured is equal to the replacement cost of the immovable.

The syndicate shall also take out third person liability insurance.

1991, c. 64, s. 1073.

1074. Non-observance of a condition of the insurance contract by a co-owner may not be set up against the syndicate.

1991, c. 64, s. 1074.

1075. The indemnity owing to the syndicate following a substantial loss is, notwithstanding article 2494, paid to the trustee appointed in the constituting act of co-ownership or, where none has been appointed, designated by the syndicate.

The indemnity shall be used to repair or rebuild the immovable, unless the syndicate decides to terminate the co-ownership, in which case the trustee, after determining the share of the indemnity of each of the co-owners according to the relative value of his fraction, pays the preferred and hypothecary creditors out of that share according to the rules in article 2497. For each of the co-owners, he remits the balance of the indemnity to the liquidator of the syndicate with his report.

1991, c. 64, s. 1075.

1076. The syndicate may, if authorized to do so, acquire or alienate fractions, common portions or other real rights.

A private portion does not cease to be private by the fact that the fraction is acquired by the syndicate, but the syndicate has no vote for that portion at the general meeting and the total number of votes that may be given is reduced accordingly.

1991, c. 64, s. 1076.

1077. The syndicate is liable for damage caused to the co-owners or third persons by faulty design, construction defects or lack of maintenance of the common portions, without prejudice to any counterclaim.

1991, c. 64, s. 1077; 2002, c. 19, s. 15.

1078. A judgment condemning the syndicate to pay a sum of money is executory against the syndicate and against each of the persons who were co-owners at the time the cause of action arose, proportionately to the relative value of his fraction.

The judgment may not be executed against the contingency fund, except for a debt arising from the repair of the immovable or the replacement of common portions.

1991, c. 64, s. 1078.

1079. The syndicate may demand the resiliation of the lease of a private portion, after notifying the lessor and the lessee, where the non-performance of an obligation by the lessee causes serious prejudice to a co-owner or to another occupant of the immovable.

1991, c. 64, s. 1079.

1080. Where the refusal of a co-owner to comply with the declaration of co-ownership causes serious and irreparable prejudice to the syndicate or to one of the co-owners, either of them may apply to the court for an injunction ordering the co-owner to comply with the declaration.

If the co-owner violates the injunction or refuses to obey it, the court may, in addition to the other penalties it may impose, order the sale of the co-owner's fraction, in accordance with the provisions of the Code of Civil Procedure regarding the sale of the property of others.

1991, c. 64, s. 1080.

1081. The syndicate may institute any action on the grounds of latent defects, faulty design or construction defects of the immovable or defects in the ground. In a case where the faults or defects affect the private portions, the syndicate may not proceed until it has obtained the authorization of the co-owners of those portions.

Where the defendant sets up the failure to act with diligence against an action based on a latent defect, such diligence is appraised in respect of the syndicate or of a co-owner from the day of the election of a new board of directors, after the promoter loses control of the syndicate.

1991, c. 64, s. 1081; 2002, c. 19, s. 15.

1082. The syndicate, within six months of being notified by the owner of an immovable under emphyteusis or superficies that he intends to transfer by onerous title his rights in the immovable, may acquire such rights in preference to any other potential acquirer during that period. If it is not notified of the planned transfer, it may, within six months from the time it learns that a third person has acquired the owner's rights, acquire such rights from that person by reimbursing him for the price of transfer and the costs he has paid.

1991, c. 64, s. 1082.

1083. The syndicate may join an association of co-ownership syndicates formed for the creation, administration and upkeep of common services for several immovables held in co-ownership, or for the pursuit of common interests.

1991, c. 64, s. 1083.

SECTION VI

BOARD OF DIRECTORS OF THE SYNDICATE

1084. The composition of the board of directors of the syndicate, the mode of appointment, replacement and remuneration of the directors and their other terms of appointment are fixed by by-law of the immovable.

The court, on the motion of a co-owner, may appoint or replace a director and fix his terms of appointment if there is no provision therefor in the by-laws or if it is impossible to proceed in the prescribed manner.

1991, c. 64, s. 1084.

1085. The day-to-day administration of the syndicate may be entrusted to a manager chosen from among the co-owners or otherwise.

The manager acts as the administrator of the property of others charged with simple administration.

1991, c. 64, s. 1085.

1086. A director or the manager may be replaced by the syndicate if, being a co-owner, he neglects to pay his contribution to the common expenses or to the contingency fund.

1991, c. 64, s. 1086.

SECTION VII

GENERAL MEETING OF THE CO-OWNERS

1087. The notice calling the annual general meeting of the co-owners shall be accompanied with, in addition to the balance sheet, the income statement for the preceding financial period, the statement of debts and claims, the budget forecast, any draft amendment to the declaration of co-ownership and a note on the general terms and conditions of any proposed contract or planned work.

1991, c. 64, s. 1087.

1088. Within five days of receiving notice of a general meeting of the co-owners, any co-owner may cause a question to be placed on the agenda.

The board of directors gives written notice of the questions newly placed on the agenda to the co-owners before the meeting.

1991, c. 64, s. 1088.

1089. Co-owners holding a majority of the votes constitute a quorum at general meetings.

If a quorum is not reached, the meeting is declared adjourned to a later date, notice of which is given to all the co-owners; three-quarters of the members present or represented at the second meeting constitute a quorum.

A meeting at which there is no longer a quorum shall be adjourned if a co-owner requests it.

1991, c. 64, s. 1089.

1090. Each co-owner is entitled to a number of votes at a general meeting proportionate to the relative value of his fraction. The undivided co-owners of a fraction vote in proportion to their undivided shares.

1991, c. 64, s. 1090.

1091. Where, in a co-ownership comprising fewer than five fractions, a co-owner is entitled to more than one-half of all the votes available to the co-owners, the number of votes to which he is entitled at a meeting is reduced to the total number of votes to which the other co-owners present or represented at the meeting are entitled.

1991, c. 64, s. 1091.

1092. No promoter of a co-ownership comprising five or more fractions is entitled, in addition to the voting rights attached to the fraction serving as his residence, to over sixty per cent of all the votes of the co-owners at the end of the second and third years after the date of registration of the declaration of co-ownership.

The limit is subsequently reduced to twenty-five per cent.

1991, c. 64, s. 1092.

1093. Any person who, at the time of registration of a declaration of co-ownership, owns at least one-half of all the fractions, or his successors, other than a person who in good faith acquires a fraction for a price equal to its market value with the intention of inhabiting it, is considered to be a promoter.

1991, c. 64, s. 1093.

1094. Any co-owner who has not paid his share of the common expenses or his contribution to the contingency fund for more than three months is deprived of his voting rights.

1991, c. 64, s. 1094.

1095. No assignment of the voting rights of a co-owner which has not been declared to the syndicate may be set up against it.

1991, c. 64, s. 1095.

1096. Decisions of the syndicate, including a decision to correct a clerical error in the declaration of co-ownership, are taken by a majority of the co-owners present or represented at the meeting.

1991, c. 64, s. 1096.

1097. Decisions respecting the following matters require a majority vote of the co-owners representing three-quarters of the voting rights of all the co-owners:

- (1) acts of acquisition or alienation of immovables by the syndicate;
- (2) work for the alteration, enlargement or improvement of the common portions, and the apportionment of its cost;
- (3) the construction of buildings for the creation of new fractions;
- (4) the amendment of the constituting act of co-ownership or of the description of the fractions.

1991, c. 64, s. 1097.

1098. Decisions on the following matters require a majority vote of three-quarters of the co-owners representing ninety per cent of the voting rights of all the co-owners:

- (1) to change the destination of the immovable;
- (2) to authorize the alienation of common portions the retention of which is necessary to the destination of the immovable;
- (3) to amend the declaration of co-ownership in order to permit the holding of a fraction by several persons having a right of periodical and successive enjoyment.

1991, c. 64, s. 1098.

1099. Where the number of votes available to a co-owner or a promoter is reduced by the effect of this section, the total number of votes that may be cast by all the co-owners to decide a question requiring a majority in number and votes is reduced by the same number.

1991, c. 64, s. 1099.

1100. The co-owners of contiguous private portions may alter the boundaries between their private portions without obtaining the approval of the general meeting provided they obtain the consent of their hypothecary creditors and of the syndicate. No alteration may increase or decrease the relative value of the group of private portions altered or the total of the voting rights attached to them.

The syndicate amends the declaration of co-ownership and the cadastral plan at the expense of the co-owners contemplated in the first paragraph; the act of amendment shall be

accompanied with the consent of the creditors, the co-owners and the syndicate.

1991, c. 64, s. 1100.

1101. Any stipulation of the declaration of co-ownership which changes the number of votes required in this chapter for taking any decision is deemed unwritten.

1991, c. 64, s. 1101; 1992, c. 57, s. 716.

1102. Any decision of the syndicate which, contrary to the declaration of co-ownership, imposes on a co-owner a change in the relative value of his fraction, a change of destination of his private portion or a change in the use he may make of it is without effect.

1991, c. 64, s. 1102; 2002, c. 19, s. 15.

1103. Any co-owner may apply to the court to annul a decision of the general meeting if the decision is biased, if it was taken with intent to injure the co-owners or in contempt of their rights, or if an error was made in counting the votes.

The action is forfeited unless instituted within sixty days after the meeting.

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

1991, c. 64, s. 1103.

SECTION VIII

LOSS OF CONTROL OF THE SYNDICATE BY THE PROMOTER

1104. Within ninety days from the day on which the promoter of a co-ownership ceases to hold a majority of voting rights in the general meeting of the co-owners, the board of directors shall call a special meeting of the co-owners to elect a new board of directors.

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

1991, c. 64, s. 1104.

1105. The board of directors renders account of its administration at the special meeting.

It produces the financial statements, which shall be accompanied with the comments of an accountant on the financial situation of the syndicate. The accountant shall, in his report to the co-owners, indicate any irregularity that has come to his attention.

The financial statements shall be audited on the application of co-owners representing forty per cent of the voting rights of all the co-owners. The application may be made at any time, even before the meeting.

1991, c. 64, s. 1105.

1106. The accountant has a right of access at all times to the books, accounts and vouchers concerning the co-ownership.

He may require the promoter or an administrator to give him any information or explanation necessary for the performance of his duties.

1991, c. 64, s. 1106.

1107. The new board of directors may, within sixty days of the election, terminate, without penalty, a contract for the maintenance of the immovable or for other services entered into before the election by the syndicate, where the term of the contract exceeds one year.

1991, c. 64, s. 1107.

SECTION IX

TERMINATION OF CO-OWNERSHIP

1108. Co-ownership of an immovable may be terminated by a decision of a majority of three-quarters of the co-owners representing ninety per cent of the voting rights of all the co-owners.

The decision to terminate the co-ownership shall be recorded in writing and signed by the syndicate and the persons holding hypothecs on the immovable or part thereof. This decision is entered in the land register under the registration numbers of the common portions and private portions.

1991, c. 64, s. 1108.

1109. The syndicate is liquidated according to the rules of Book One on the liquidation of legal persons.

For that purpose, the liquidator is seised of the immovable and of all the rights and obligations of the co-owners in the immovable, in addition to the property of the syndicate.

1991, c. 64, s. 1109.

CHAPTER IV

SUPERFICIES

SECTION I

ESTABLISHMENT OF SUPERFICIES

1110. Superficies results from division of the object of the right of ownership of an immovable, transfer of the right of accession or renunciation of the benefit of accession.

1991, c. 64, s. 1110.

1111. The right of the superficiary to use the subsoil is governed by an agreement. Failing agreement, the subsoil is charged with the servitudes necessary for the exercise of the right. These servitudes are extinguished upon termination of the right.

1991, c. 64, s. 1111.

1112. The superficiary and the owner of the subsoil each bear the charges encumbering what constitutes the object of their respective rights of ownership.

1991, c. 64, s. 1112.

1113. Superficies may be perpetual, but a term may be fixed by the agreement establishing its conditions.

1991, c. 64, s. 1113.

SECTION II

TERMINATION OF SUPERFICIES

1114. Superficies is terminated

- (1) by the union of the qualities of subsoil owner and superficiary in the same person, subject to the rights of third persons;
- (2) by the fulfilment of a resolutive condition;
- (3) by the expiry of the term.

1991, c. 64, s. 1114.

1115. The total loss of the constructions, works or plantations terminates superficies only if superficies is a result of the division of the object of the right of ownership.

Expropriation of the constructions, works or plantations or expropriation of the subsoil does not terminate superficies.

1991, c. 64, s. 1115.

1116. At the termination of superficies, the subsoil owner acquires by accession ownership of the constructions, works or plantations by paying their value to the superficiary.

If, however, the constructions, works or plantations are equal in value to the subsoil or of greater value, the superficiary has a right to acquire ownership of the subsoil by paying its value to the subsoil owner, unless he prefers to remove, at his own expense, the constructions, works and plantations he has made and return the subsoil to its former

condition.

1991, c. 64, s. 1116.

1117. Where the superficiary fails to exercise his right to acquire ownership of the subsoil within ninety days from the end of the superficies, the owner of the subsoil retains ownership of the constructions, works and plantations.

1991, c. 64, s. 1117.

1118. A subsoil owner and a superficiary who do not agree on the price and other terms and conditions of acquisition of the subsoil or of the constructions, works or plantations may apply to the court to fix the price and the terms and conditions of acquisition. The judgment is equivalent to a valid title and has all the effects thereof.

They may also, if they fail to agree on the terms and conditions of removal of the constructions, works or plantations, apply to the court to fix them.

1991, c. 64, s. 1118.

TITLE FOUR

DISMEMBERMENTS OF THE RIGHT OF OWNERSHIP

GENERAL PROVISION

1119. Usufruct, use, servitude and emphyteusis are dismemberments of the right of ownership and are real rights.

1991, c. 64, s. 1119.

CHAPTER I

USUFRUCT

SECTION I

NATURE OF USUFRUCT

1120. Usufruct is the right of use and enjoyment, for a certain time, of property owned by another as one's own, subject to the obligation of preserving its substance.

1991, c. 64, s. 1120.

1121. Usufruct is established by contract, by will or by law; it may also be established by judgment in the cases prescribed by law.

1991, c. 64, s. 1121.

1122. Usufruct may be established for the benefit of one or several usufructuaries jointly or successively.

Only a person who exists when the usufruct in his favour opens may be a usufructuary.

1991, c. 64, s. 1122.

1123. No usufruct may last longer than one hundred years even if the act granting it provides a longer term or creates a successive usufruct.

Usufruct granted without a term is granted for life or, if the usufructuary is a legal person, for thirty years.

1991, c. 64, s. 1123.

SECTION II

RIGHTS OF THE USUFRUCTUARY

§1. — *Scope of the usufruct*

1124. The usufructuary has the use and enjoyment of the property subject to usufruct; he takes the property in the condition in which he finds it.

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

1991, c. 64, s. 1124.

1125. The usufructuary may require the bare owner to cease any act which prevents him from fully exercising his right.

The bare owner's alienation of his right does not affect the right of the usufructuary.

1991, c. 64, s. 1125.

1126. The usufructuary appropriates the fruits and revenues produced by the property.

1991, c. 64, s. 1126.

1127. The usufructuary may dispose, as though he were its owner, of all the property under his usufruct which cannot be used without being consumed, subject to the obligation of returning similar property in the same quantity and of the same quality at the end of the usufruct.

Where the usufructuary is unable to return similar property he shall pay the value thereof in cash.

1991, c. 64, s. 1127.

1128. The usufructuary may dispose, as a prudent and diligent administrator, of property which, though not consumable, rapidly deteriorates with use.

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

1991, c. 64, s. 1128.

1129. The usufructuary is entitled to the fruits attached to the property at the beginning of the usufruct. He has no right to the fruits still attached to it at the time his usufruct ceases.

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

1991, c. 64, s. 1129.

1130. Revenues are counted, between the usufructuary and the bare owner, day by day. They belong to the usufructuary from the day his right begins to the day it terminates, regardless of when they are exigible or paid, except dividends, which belong to the usufructuary only if they are declared during the usufruct.

1991, c. 64, s. 1130.

1131. Extraordinary income derived from ownership of the property subject to usufruct, such as premiums granted upon the redemption of securities, are paid to the usufructuary, who is accountable for them to the bare owner at the end of the usufruct.

1991, c. 64, s. 1131.

1132. If a debt subject to a usufruct becomes payable during the usufruct, the price is paid to the usufructuary, who gives an acquittance for it.

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

1991, c. 64, s. 1132.

1133. The right to increase the capital subject to the usufruct, such as the right to subscribe for securities, belongs to the bare owner, but the right of the usufructuary extends to the increase.

Where the bare owner elects to alienate his right, the proceeds of the alienation are remitted to the usufructuary, who is accountable for it at the end of the usufruct.

1991, c. 64, s. 1133.

1134. Voting rights attached to shares or to other securities, to an undivided share, to a fraction of a property held in co-ownership or to any other property belong to the usufructuary.

However, any vote having the effect of altering the substance of the principal property, such as the capital stock or property held in co-ownership, or of changing the destination of the property or terminating the legal person, enterprise or group concerned belongs to the bare owner.

The distribution of the exercise of the voting rights may not be set up against third persons; it is discussed only between the usufructuary and the bare owner.

1991, c. 64, s. 1134.

1135. The usufructuary may transfer his right or lease a property included in the usufruct.

1991, c. 64, s. 1135.

1136. A creditor of the usufructuary may cause the rights of the usufructuary to be seized and sold, subject to the rights of the bare owner.

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

1991, c. 64, s. 1136.

§2. — Disbursements

1137. Necessary disbursements made by the usufructuary are treated, in relation to the bare owner, as those made by a possessor in good faith.

1991, c. 64, s. 1137.

1138. The useful disbursements made by the usufructuary are preserved by the bare owner without indemnity at the end of the usufruct, unless the usufructuary elects to remove them and restore the property to its original state. However, the bare owner may not compel the usufructuary to remove them.

1991, c. 64, s. 1138.

§3. — Trees and minerals

1139. In no case may the usufructuary fell trees growing on the land subject to the usufruct except for repairs, maintenance or exploitation of the land. He may, however, dispose of those which have fallen or died naturally.

The usufructuary replaces the trees that have been destroyed, in conformity with the usage of the place or the custom of the owners. He also replaces orchard and sugar bush trees,

unless most of them have been destroyed.

1991, c. 64, s. 1139.

1140. The usufructuary may begin agricultural or sylvicultural operations if the land subject to the usufruct is suitable therefor.

Where the usufructuary begins or continues operations, he shall do so in such a manner as not to exhaust the soil or prevent the regrowth of the forest. He shall also, in the case of sylvicultural operations, have his operating plan approved by the bare owner before his operations begin. If he fails to obtain such approval, he may have the plan approved by the court.

1991, c. 64, s. 1140.

1141. No usufructuary may extract minerals from the land subject to the usufruct except for the repair and maintenance of the land.

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

1991, c. 64, s. 1141.

SECTION III

OBLIGATIONS OF THE USUFRUCTUARY

§1. — Inventory and security

1142. The usufructuary, in the manner of an administrator of the property of others, makes an inventory of the property subject to his right unless the person constituting the usufruct has done so himself or has exempted him from doing so. No exemption may be granted if the usufruct is successive.

The usufructuary makes the inventory at his own expense and furnishes a copy to the bare owner.

1991, c. 64, s. 1142.

1143. In no case may the usufructuary compel the person constituting the usufruct or the bare owner to deliver the property to him until he has made an inventory.

1991, c. 64, s. 1143.

1144. Except in the case of a vendor or donor who has reserved the usufruct, the usufructuary shall, within sixty days from the opening of the usufruct, take out insurance or furnish other security to the bare owner to guarantee performance of his obligations. The usufructuary shall furnish additional security if his obligations increase while the usufruct

lasts.

The usufructuary is exempted from these obligations if he is unable to perform them or if the person constituting the usufruct so provides.

1991, c. 64, s. 1144.

1145. If the usufructuary fails to furnish security within the allotted time, the bare owner may have the property sequestered.

The sequestrator, in the manner of an administrator of the property of others charged with simple administration, invests the amounts included in the usufruct and the proceeds of the sale of perishable property. He similarly invests the amounts deriving from payment of the claims subject to the usufruct.

1991, c. 64, s. 1145.

1146. Any unjustified delay by the usufructuary in making an inventory of the property or furnishing security deprives him of his right to the fruits and revenues from the opening of the usufruct until the performance of his obligations.

1991, c. 64, s. 1146.

1147. The usufructuary may apply to the court for leave to retain sequestered movables necessary for his use under no other condition than that he undertake to produce them at the end of the usufruct.

§2. — Insurance and repairs

1991, c. 64, s. 1147.

1148. The usufructuary is bound to insure the property against ordinary risks such as fire and theft and to pay the insurance premiums while the usufruct lasts. He is, however, exempt from that obligation where the insurance premium is too high in relation to the risks.

1991, c. 64, s. 1148.

1149. In the case of a loss, the indemnity is paid to the usufructuary, who gives an acquittance therefor to the insurer.

The usufructuary is bound to use the indemnity for the repair of the property, except in the case of total loss, where he may have enjoyment of the indemnity.

1991, c. 64, s. 1149.

1150. The usufructuary or the bare owner may take out insurance on his own account to secure his rights.

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

1991, c. 64, s. 1150.

1151. Maintenance of the property is the responsibility of the usufructuary. He is not bound to make major repairs except where they are necessary as the result of his act or omission, in particular his failure to carry out maintenance repairs since the opening of the usufruct.

1991, c. 64, s. 1151.

1152. Major repairs are those which affect a substantial part of the property and require extraordinary outlays, such as repairs relating to beams and support walls, to the replacement of roofs, to prop-walls or to heating, electrical, plumbing or electronic systems, and, in respect of movables, to motive parts or the casing of the property.

1991, c. 64, s. 1152.

1153. The usufructuary shall notify the bare owner that major repairs are necessary.

The bare owner is under no obligation to make the major repairs. If he makes them, the usufructuary suffers the resulting inconvenience. If he does not make them, the usufructuary may make them and be reimbursed for the cost at the end of the usufruct.

1991, c. 64, s. 1153.

§3. — *Other charges*

1154. The usufructuary is liable, in proportion to the duration of the usufruct, for ordinary charges affecting the property subject to his right and for the other charges that are ordinarily paid with the revenues.

The usufructuary is similarly liable for extraordinary charges that are payable in periodic instalments over several years.

1991, c. 64, s. 1154.

1155. If a usufructuary by particular title is forced to pay a debt of the succession in order to preserve the property subject to his right, he may require immediate reimbursement from the debtor or reimbursement from the bare owner at the end of the usufruct.

1991, c. 64, s. 1155.

1156. The usufructuary by general title and the bare owner are liable for the payment of the debts of the succession in proportion to their shares in the succession.

The bare owner is liable for the capital and the usufructuary for the interest.

1991, c. 64, s. 1156.

1157. The usufructuary under a legacy by general title may pay the debts of the succession; the bare owner is accountable therefor to him at the end of the usufruct.

Where the usufructuary elects not to pay the debts of the succession, the bare owner may cause property subject to the right of the usufructuary up to the amount of the debts to be sold or pay the debts himself; in this case, for the duration of the usufruct, the usufructuary pays interest to the bare owner on the amount paid.

1991, c. 64, s. 1157.

1158. The usufructuary is liable for the costs of any legal proceedings related to his right of usufruct.

Where proceedings relate to both the rights of the bare owner and those of the usufructuary, the rules governing payment of the debts of the succession between the usufructuary under a legacy by general title and the bare owner apply unless the usufruct is terminated by the judgment, in which case the costs are divided equally between the usufructuary and the bare owner.

1991, c. 64, s. 1158.

1159. If, during the usufruct, a third person encroaches on the property of the bare owner or otherwise infringes his rights, the usufructuary shall notify the bare owner, failing which he is liable for all resulting damage, as if he himself had committed waste.

1991, c. 64, s. 1159.

1160. Neither the bare owner nor the usufructuary is under any obligation to replace anything that has fallen into decay.

A usufructuary exempted from insuring the property is under no obligation to replace or pay the value of any property that perishes by superior force.

1991, c. 64, s. 1160.

1161. If a usufruct is established upon a herd or a flock and the entire herd or flock perishes by superior force, the usufructuary exempted from insuring the property is bound to account to the owner for the skins or their value.

If the herd or flock does not perish entirely, the usufructuary is bound to replace those animals which have perished, up to the number of the increase.

1991, c. 64, s. 1161.

SECTION IV

EXTINCTION OF USUFRUCT

1162. Usufruct is extinguished

- (1) by the expiry of the term;
- (2) by the death of the usufructuary or the dissolution of the legal person;
- (3) by the union of the qualities of usufructuary and bare owner in the same person, subject to the rights of third persons;
- (4) by the forfeiture or renunciation of the right or its conversion into an annuity;
- (5) by non-user for ten years.

1991, c. 64, s. 1162.

1163. Usufruct is also extinguished by the total loss of the property over which it is established, unless the property is insured by the usufructuary.

In case of partial loss of the property, the usufruct subsists upon the remainder.

1991, c. 64, s. 1163.

1164. Usufruct is not extinguished by expropriation of the property on which it is established. The indemnity is remitted to the usufructuary under the condition of his rendering account of it at the end of the usufruct.

1991, c. 64, s. 1164.

1165. If a usufruct is granted until a third person reaches a certain age, it continues until the date he would have reached that age, even if he has died.

1991, c. 64, s. 1165.

1166. A usufruct created for the benefit of several usufructuaries successively terminates with the death of the last usufructuary or the dissolution of the last legal person.

The extinguishment of the right of one of the usufructuaries in a joint usufruct benefits the bare owner.

1991, c. 64, s. 1166.

1167. At the end of the usufruct, the usufructuary returns the property subject to the usufruct to the bare owner in the condition in which it is at that time.

The usufructuary is accountable for any loss caused by his fault or not resulting from normal use of the property.

1991, c. 64, s. 1167.

1168. A usufructuary who makes misuse of enjoyment, who commits waste on the property, who allows it to depreciate or who in any manner endangers the rights of the bare owner may be declared to have forfeited his right.

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

The creditors of the usufructuary may intervene in the proceedings to ensure the preservation of their rights; they may offer to repair the waste and provide security for the future.

1991, c. 64, s. 1168.

1169. A usufructuary may renounce his right, in whole or in part.

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

1991, c. 64, s. 1169.

1170. Total renunciation may be set up against the bare owner from the day he is served notice of it; partial renunciation may be set up from the date of judicial proceedings or of an agreement between the parties.

1991, c. 64, s. 1170.

1171. A usufructuary having serious difficulty in performing his obligations is entitled to require the bare owner or joint or successive usufructuary to convert his right to an annuity.

Failing agreement, the court, if it confirms the right of the usufructuary, fixes the annuity, taking into account, in particular, the scope and duration of the right and the fruits and revenues derived from it.

1991, c. 64, s. 1171.

CHAPTER II

USE

1172. A right of use is the right to enjoy the property of another for a time and to take the fruits and revenues thereof, to the extent of the needs of the user and the persons living with him or his dependants.

1991, c. 64, s. 1172.

1173. The right of use may not be assigned or seized unless the agreement or the act establishing the right of use provides otherwise.

If the agreement or act is silent as to whether the right may be assigned or seized, the court may, in the interest of the user and after ascertaining that the owner suffers no damage, authorize the assignment or seizure of the right.

1991, c. 64, s. 1173.

1174. A user whose right bears on only part of a property may use any facility intended for common use.

1991, c. 64, s. 1174.

1175. A user who takes all the fruits and revenues of the property or who uses the entire property is fully liable for the costs incurred to produce them, for maintenance repairs and for payment of the charges in the same manner as a usufructuary.

Where the user takes only part of the fruits and revenues or uses only part of the property, he contributes in proportion to his use.

1991, c. 64, s. 1175.

1176. The provisions governing usufruct, adapted as required, are, in all other respects, applicable to the right of use.

However, the rules relating to conversion of the usufruct into an annuity do not apply to the right of use unless that right may be assigned and seized.

1991, c. 64, s. 1176.

CHAPTER III

SERVITUDES

SECTION I

NATURE OF SERVITUDES

1177. A servitude is a charge imposed on an immovable, the servient land, in favour of another immovable, the dominant land, belonging to a different owner.

Under the charge the owner of the servient land is required to tolerate certain acts of use by the owner of the dominant land or himself abstain from exercising certain rights inherent in ownership.

A servitude extends to all that is necessary for its exercise.

1991, c. 64, s. 1177.

1178. An obligation to perform an act may be attached to a servitude and imposed on the owner of the servient land. The obligation is an accessory to the servitude and can only be stipulated for the service or exploitation of the immovable.

1991, c. 64, s. 1178.

1179. Servitudes are either continuous or discontinuous.

Continuous servitudes, such as servitudes of view or of no building, do not require the actual intervention of the holder.

Discontinuous servitudes, such as pedestrian or vehicular rights of way, require the actual intervention of the holder.

1991, c. 64, s. 1179.

1180. Servitudes are either apparent or unapparent.

A servitude is apparent if it is manifested by an external sign; otherwise it is unapparent.

1991, c. 64, s. 1180.

1181. A servitude is established by contract, by will, by destination of proprietor or by the effect of law.

It may not be established without title, and possession, even immemorial, is insufficient for this purpose.

1991, c. 64, s. 1181.

1182. Servitudes are not affected by the transfer of ownership of the servient or dominant land. They remain attached to the immovables through changes of ownership, subject to the provisions relating to the publication of rights.

1991, c. 64, s. 1182.

1183. Servitude by destination of proprietor is evidenced in writing by the owner of the land who, in contemplation of its future parcelling, immediately establishes the nature, scope and situation of the servitude on one part of the land in favour of other parts.

1991, c. 64, s. 1183.

SECTION II

EXERCISE OF SERVITUDES

1184. The owner of the dominant land may, at his own expense, take the measures or make all the works necessary for the exercise and preservation of the servitude unless otherwise stipulated in the act establishing the servitude.

At the end of the servitude he shall, at the request of the owner of the servient land, restore the place to its former condition.

1991, c. 64, s. 1184.

1185. The owner of the servient land, charged by the title with making the necessary works for the exercise and preservation of the servitude, may free himself of the charge by abandoning the entire servient land or any part of it sufficient for the exercise of the servitude to the owner of the dominant land.

1991, c. 64, s. 1185.

1186. In no case may the owner of the dominant land make any change that would aggravate the situation of the servient land.

In no case may the owner of the servient land do anything that would tend to diminish the exercise of the servitude or to render it less convenient. However, he may, at his own expense, provided he has an interest in doing so, transfer the site of the servitude to another place where its exercise will be no less convenient to the owner of the dominant land.

1991, c. 64, s. 1186.

1187. If the dominant land is divided, the servitude remains due for each portion, but the situation of the servient land may not thereby be aggravated.

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

1991, c. 64, s. 1187.

1188. Division of the servient land does not affect the rights of the owner of the dominant land.

1991, c. 64, s. 1188.

1189. Except in the case of land enclosed by that of others, a servitude of right of way may be redeemed where its usefulness to the dominant land is out of proportion to the inconvenience or depreciation it entails for the servient land.

Failing agreement, the court, if it grants the right of redemption, fixes the price, taking into account, in particular, the length of time for which the servitude has existed and the change of value entailed by the servitude both in favour of the servient land and to the detriment of the dominant land.

1991, c. 64, s. 1189.

1190. The parties may, in writing, exclude the possibility of redeeming a servitude for a period of not over thirty years.

1991, c. 64, s. 1190.

SECTION III

EXTINCTION OF SERVITUDES

1191. A servitude is extinguished

- (1) by the union of the qualities of owner of the servient land and owner of the dominant land in the same person;
- (2) by the express renunciation of the owner of the dominant land;
- (3) by the expiry of the term for which it was established;
- (4) by redemption;
- (5) by non-user for ten years.

1991, c. 64, s. 1191.

1192. In the case of discontinuous servitudes, prescription begins to run from the day the owner of the dominant land ceases to exercise the servitude and in the case of continuous servitudes, from the day any act contrary to their exercise is done.

1991, c. 64, s. 1192.

1193. The mode of exercising a servitude may be prescribed just as the servitude itself, and in the same manner.

1991, c. 64, s. 1193.

1194. Prescription runs even where the dominant land or the servient land undergoes a change of such a kind as to render exercise of the servitude impossible.

1991, c. 64, s. 1194.

CHAPTER IV

EMPHYTEUSIS

SECTION I

NATURE OF EMPHYTEUSIS

1195. Emphyteusis is the right which, for a certain time, grants a person the full benefit and enjoyment of an immovable owned by another provided he does not endanger its existence and undertakes to make constructions, works or plantations thereon that durably increase its value.

Emphyteusis is established by contract or by will.

1991, c. 64, s. 1195.

1196. Emphyteusis affecting both the land and an existing immovable may be the subject of a declaration of co-emphyteusis which is governed by the same rules as those provided for a declaration of co-ownership. It is also subject to the rules, adapted as required, applicable to co-ownership established in respect of an existing immovable by an emphyteutic lessee.

1991, c. 64, s. 1196.

1197. The term of the emphyteusis shall be stipulated in the constituting act and be not less than ten nor more than one hundred years. If it is longer, it is reduced to one hundred years.

1991, c. 64, s. 1197.

1198. Emphyteusis affecting the land on which an existing immovable is held in co-ownership, or affecting both the land and an existing immovable may be renewed without the emphyteutic lessee's being required to make new constructions or plantations or new works, other than useful disbursements.

1991, c. 64, s. 1198.

1199. The creditor of the emphyteutic lessee may cause the latter's rights to be seized and sold, subject to the rights of the owner of the immovable.

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

1991, c. 64, s. 1199.

SECTION II

RIGHTS AND OBLIGATIONS OF THE EMPHYTEUTIC LESSEE AND OF THE OWNER

1200. The emphyteutic lessee has all the rights in the immovable that are attached to the quality of owner, subject to the restrictions contained in this chapter and in the act constituting emphyteusis.

The constituting act may limit the exercise of the rights of the parties, particularly by

granting rights or guarantees to the owner for protecting the value of the immovable, ensuring its conservation, yield or use or by otherwise preserving the rights of the owner or of the emphyteutic lessee or regulating the performance of the obligations established in the constituting act.

1991, c. 64, s. 1200.

1201. The emphyteutic lessee, at his own expense, and after convening the owner, causes a statement of the immovables subject to his right to be drawn up, unless the owner has exempted him therefrom.

1991, c. 64, s. 1201.

1202. The emphyteutic lessee is liable for a partial loss of the immovable; he remains liable in such a case for full payment of the price stipulated in the constituting act.

1991, c. 64, s. 1202.

1203. The emphyteutic lessee is bound to make repairs, even major repairs, concerning the immovable or the constructions, works or plantations made in the performance of his obligation.

1991, c. 64, s. 1203.

1204. An emphyteutic lessee who commits waste or fails to prevent the deterioration of the immovable or in any manner endangers the rights of the owner may be declared forfeited of his right.

The court, according to the gravity of the circumstances, may resiliate the emphyteusis with compensation payable immediately or by instalments to the owner, or without compensation, or it may require the emphyteutic lessee to furnish other security or impose any other obligations or conditions on him.

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

1991, c. 64, s. 1204.

1205. The emphyteutic lessee is liable for all real property charges affecting the immovable.

1991, c. 64, s. 1205.

1206. The owner has the same obligations towards the emphyteutic lessee as a vendor.

1991, c. 64, s. 1206.

1207. Where a price payable in a lump sum or by instalments is fixed in the constituting act and the emphyteutic lessee fails to pay it for three years, the owner is entitled, after at

least ninety days' notice, to apply for resiliation of the constituting act.

Resiliation may not be applied for where divided co-ownership is established in respect of an immovable built by the emphyteutic lessee. The same applies where the immovable is the subject of a declaration of co-emphyteusis.

1991, c. 64, s. 1207.

SECTION III

TERMINATION OF EMPHYTEUSIS

1208. Emphyteusis is terminated

- (1) by the expiry of the term stipulated in the constituting act;
- (2) by the total loss or expropriation of the immovable;
- (3) by the resiliation of the constituting act;
- (4) by the union of the qualities of owner and emphyteutic lessee in the same person;
- (5) by non-user for ten years;
- (6) by abandonment.

1991, c. 64, s. 1208.

1209. Upon termination of the emphyteusis, the owner resumes the immovable free of all the rights and charges granted by the emphyteutic lessee, unless the termination of the emphyteusis results from resiliation by agreement or from the union of the qualities of owner and emphyteutic lessee in the same person.

1991, c. 64, s. 1209.

1210. Upon termination of the emphyteusis, the emphyteutic lessee shall return the immovable in a good state of repair with the constructions, works or plantations stipulated in the constituting act, unless they have perished by superior force.

Any additions made to the immovable by the emphyteutic lessee which he is under no obligation to make are treated as disbursements made by a possessor in good faith.

1991, c. 64, s. 1210.

1211. Unless the emphyteutic lessee has renounced his right, emphyteusis may also be terminated by abandonment, which may take place only if the emphyteutic lessee has fulfilled all his past obligations and leaves the immovable free of all charges.

1991, c. 64, s. 1211.

TITLE FIVE

RESTRICTIONS ON THE FREE DISPOSITION OF CERTAIN PROPERTY

CHAPTER I

STIPULATIONS OF INALIENABILITY

1212. No restriction on the exercise of the right to dispose of property may be stipulated, except by gift or will.

A stipulation of inalienability is made in writing at the time of transfer of ownership of the property or a dismembered right of ownership in it to a person or to a trust.

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

1991, c. 64, s. 1212.

1213. A person whose property is inalienable may be authorized by the court to dispose of the property if the interest that had justified the stipulation of inalienability has disappeared or where a greater interest comes to require it.

The court may, where it authorizes alienation of the property, fix any conditions it considers necessary to safeguard the interests of the person who stipulated inalienability, his successors or the person for whose benefit inalienability was stipulated.

1991, c. 64, s. 1213.

1214. A stipulation of inalienability may not be set up against third persons unless it is published in the proper register.

1991, c. 64, s. 1214.

1215. A stipulation of inalienability of a property renders the property unseizable for any debt contracted before or during the period of inalienability by the person who receives the property, subject, however, to the provisions of the Code of Civil Procedure.

1991, c. 64, s. 1215.

1216. Any clause tending to prevent a person whose property is inalienable from contesting the validity of the stipulation of inalienability or from applying for authorization to transfer the property is deemed unwritten.

Any penal clause to the same effect is also deemed unwritten.

1991, c. 64, s. 1216; 2002, c. 19, s. 15.

1217. The nullity of an alienation made notwithstanding a stipulation of inalienability and without the authorization of the court may not be invoked by anyone except the person who made the stipulation and his successors or the person for whose benefit the stipulation was made.

1991, c. 64, s. 1217.

CHAPTER II

SUBSTITUTION

SECTION I

NATURE AND SCOPE OF SUBSTITUTION

1218. Substitution exists where a person receives property by a liberality with the obligation of delivering it over to a third person after a certain period.

Substitution is established by gift or by will; it shall be evidenced in writing and published in the registry office.

1991, c. 64, s. 1218.

1219. The person who has the obligation to deliver over is called the institute and the person who is entitled to take after him is called the substitute.

A substitute who takes with the obligation to deliver over becomes in turn the institute in respect of the subsequent substitute.

1991, c. 64, s. 1219.

1220. A prohibition against disposing of the property by will that is subject to no other indication entails substitution in favour of the intestate heirs of the donee or legatee with respect to property given or bequeathed and remaining at his death.

1991, c. 64, s. 1220.

1221. A substitution may not extend to more than two successive ranks of persons exclusive of the initial institute, and is without effect for subsequent ranks.

Accretion between co-institutes upon the death of one of them, where it is stipulated that his share passes to the surviving institutes, is not considered to be made to a subsequent rank.

1991, c. 64, s. 1221.

1222. The rules on successions, particularly those relating to the right of option or to testamentary dispositions, adapted as required, apply to a substitution from the time it opens, whether it was created by gift or by will.

1991, c. 64, s. 1222.

SECTION II

SUBSTITUTIONS BEFORE OPENING

§1. — Rights and obligations of the institute

1223. Before the opening of a substitution, the institute is the owner of the substituted property, which forms, within his personal patrimony, a separate patrimony intended for the substitute.

1991, c. 64, s. 1223.

1224. Within two months after the gift or after acceptance of the legacy, the institute, in the manner of an administrator of the property of others, shall make an inventory of the property at his own expense, after convening the substitute.

1991, c. 64, s. 1224.

1225. The institute, in exercising his rights and performing his obligations, shall act with prudence and diligence, in view of the rights of the substitute.

1991, c. 64, s. 1225.

1226. The institute shall perform all acts necessary to maintain and preserve the property.

He pays the charges and debts of all kinds that became due before the opening; he collects the claims, gives acquittance therefor and exercises all judicial recourses relating to the substituted property.

1991, c. 64, s. 1226.

1227. The institute shall insure the property against ordinary risks such as fire and theft. He is, however, dispensed from that obligation if the insurance premium is too high in relation to the risks.

The insurance indemnity becomes substituted property.

1991, c. 64, s. 1227.

1228. The right of an institute to begin or continue agricultural, sylvicultural or mining operations on substituted land is governed by the rules on usufruct.

1991, c. 64, s. 1228.

1229. An institute may alienate the substituted property by onerous title or lease it. He may also charge it with a hypothec if that is required for its upkeep and conservation or to make

an investment in the name of the substitution.

The rights of the acquirer, creditor or lessee are unaffected by the rights of the substitute at the opening of the substitution.

1991, c. 64, s. 1229.

1230. The institute is bound to reinvest, in the name of the substitution, the proceeds of any alienation of substituted property and the capital paid to him before the opening or received by him from the grantor, in accordance with the provisions relating to presumed sound investments.

1991, c. 64, s. 1230.

1231. On each anniversary of the date of inventory of the property, the institute shall inform the substitute of any change in the general mass of the property; he shall also inform him of the reinvestment he has made of the proceeds of alienation of property.

1991, c. 64, s. 1231.

1232. If the constituting act of the substitution provides therefor, the institute may dispose of the substituted property gratuitously or not reinvest the proceeds of its alienation; he has no right to bequeath it unless that is expressly permitted by the act.

In such cases, the substitution has effect only in respect of the property that was not disposed of by the institute.

1991, c. 64, s. 1232.

1233. Creditors holding a preference or hypothec on substituted property have, in respect of that property, the rights and remedies conferred on them by law.

The other creditors may cause substituted property to be seized and sold by judicial sale, after discussion of the personal patrimony of the institute. The substitute may oppose the seizure and demand that the seizure and sale be limited to the rights conferred on the institute by the substitution. Failing opposition, the sale is valid; the purchaser has a good title and the right of action of the substitute is exercisable only against the institute.

1991, c. 64, s. 1233.

1234. The institute may, before the substitution opens, renounce his rights in favour of the substitute and deliver over the substituted property to him in anticipation.

In no case does renunciation by the institute prejudice the rights of his creditors or the rights of the eventual substitute.

1991, c. 64, s. 1234.

§2. — *Rights of the substitute*

1235. Before the substitution opens, the substitute has an eventual right in the property substituted; he may dispose of or renounce his right and perform any conservatory act to ensure the protection of his right.

1991, c. 64, s. 1235.

1236. Where the institute refuses or fails to make an inventory of the property within the required time, the substitute may do so at the expense of the institute. He first convenes the institute and the other interested persons.

1991, c. 64, s. 1236.

1237. The institute shall, if the act creating the substitution so requires or if ordered by the court on the motion of the substitute or any interested person who establishes that such a measure is required, take out insurance or furnish other security to guarantee the performance of his obligations.

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

1991, c. 64, s. 1237.

1238. If the institute fails to perform his obligations or acts in a manner that endangers the rights of the substitute, the court may, depending on the gravity of the circumstances, deprive him of fruits and revenues, require him to restore the capital, declare his rights forfeited in favour of the substitute or appoint a sequestrator chosen preferably from the substitutes.

1991, c. 64, s. 1238.

1239. The rights of a substitute who is not yet conceived are exercised by the person designated by the grantor to act as curator to the substitution and who accepts the office or, where such a person is not designated or does not accept, by the person appointed by the court on the application of the institute or any interested person.

The Public Curator may be designated to act.

1991, c. 64, s. 1239.

SECTION III

OPENING OF THE SUBSTITUTION

1240. Unless an earlier time has been fixed by the grantor, the opening of the substitution takes place on the death of the institute.

Where the institute is a legal person, the substitution may not open more than thirty years after the gift or the opening of the succession, or after the day its right arises.

1991, c. 64, s. 1240.

1241. Where it is stipulated that the share of an institute passes, on his death, to the surviving institutes of the same rank, the opening of the substitution takes place only on the death of the last institute.

However, an opening so delayed may not prejudice the rights of the substitute who would have received on the death of an institute but for the stipulation; the right to receive is vested in the substitute but its exercise is suspended until the substitution opens.

1991, c. 64, s. 1241.

1242. Only a person having the required qualities to receive by gift or by will at the time the substitution opens may be a substitute.

Where there are several substitutes of the same rank, only one need have the required qualities to receive at the time his right arises to protect the right of all the other substitutes to receive, if they subsequently accept the substitution.

1991, c. 64, s. 1242.

SECTION IV

SUBSTITUTION AFTER OPENING

1243. The substitute who accepts the substitution receives the property directly from the grantor and is, by the opening, seised of ownership of the property.

1991, c. 64, s. 1243.

1244. The institute shall, at the opening, render account to the substitute and deliver over the substituted property to him.

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

1991, c. 64, s. 1244.

1245. The institute delivers the property in the condition it is in at the opening of the substitution.

The institute is liable for any loss caused by his fault or not resulting from normal use.

1991, c. 64, s. 1245.

1246. Where the substitution affects only the residue of the property given or bequeathed, the institute delivers over only the property remaining and the price still due on the alienated

property.

1991, c. 64, s. 1246.

1247. The institute is entitled to reimbursement, with interest accrued from the opening, of capital debts that he has paid without having been charged to do so and the expenses generally debited from the capital that he has incurred by reason of the substitution.

The institute is also entitled to reimbursement, in proportion to the duration of his right, of expenses generally debited from the revenues for any object that exceeds that duration.

1991, c. 64, s. 1247.

1248. The institute is entitled to be reimbursed for the useful disbursements he has made, subject to the rules applicable to possessors in good faith.

1991, c. 64, s. 1248.

1249. The opening of a substitution revives the claims and debts that existed between the institute and the grantor and terminates the confusion, in the person of the institute, of the qualities of creditor and debtor, except in respect of interest accrued until the opening.

1991, c. 64, s. 1249.

1250. The institute may retain the substituted property until payment of what is due to him.

1991, c. 64, s. 1250.

1251. The heirs of the institute are bound to perform the obligations that this section imposes on the institute, and they have the same rights as it confers on him.

The heirs of the institute are bound to continue anything that necessarily follows from the acts performed by him or that cannot be deferred without risk of loss.

1991, c. 64, s. 1251.

SECTION V

LAPSE AND REVOCATION OF SUBSTITUTION

1252. Lapse of a testamentary substitution with regard to an institute does not give rise to representation and benefits his co-institutes or, in the absence of co-institutes, the substitute.

Lapse of a testamentary substitution with regard to a substitute benefits his co-substitutes, if any; otherwise, it benefits the institute.

1991, c. 64, s. 1252.

1253. The donor may revoke the substitution with regard to the substitute, until the

opening, as long as it has not been accepted by or for the substitute. However, in respect of the donor, the substitute is deemed to have accepted where he is the child of the institute or where one of the co-substitutes has accepted the substitution.

1991, c. 64, s. 1253.

1254. Revocation of a substitution with regard to the institute benefits the co-institute, if any; otherwise it benefits the substitute; revocation with regard to the substitute benefits the co-substitute, if any; otherwise it benefits the institute.

1991, c. 64, s. 1254.

1255. The grantor may reserve for himself the prerogative of determining the share of the substitutes or confer that prerogative on the institute.

The exercise of the prerogative by the donor does not constitute a revocation of the substitution even if in effect it completely excludes a substitute from the benefit of the substitution.

1991, c. 64, s. 1255.

TITLE SIX

CERTAIN PATRIMONIES BY APPROPRIATION

CHAPTER I

THE FOUNDATION

1256. A foundation results from an act whereby a person irrevocably appropriates the whole or part of his property to the durable fulfilment of a socially beneficial purpose.

It may not have the making of profit or the operation of an enterprise as its main object.

1991, c. 64, s. 1256.

1257. The property of the foundation constitutes either an autonomous patrimony distinct from that of the settlor or any other person, or the patrimony of a legal person.

In the first case, the foundation is governed by the provisions of this Title relating to a social trust, subject to the provisions of law; in the second case, the foundation is governed by the laws applicable to legal persons of the same kind.

1991, c. 64, s. 1257.

1258. A foundation created by trust is established by gift or by will in accordance with the rules governing those acts.

1991, c. 64, s. 1258.

1259. Unless otherwise provided in the constituting act of the foundation, the initial property of the trust foundation or any property substituted therefor or added thereto shall be preserved and allow for the fulfilment of the purpose, either by the distribution only of those revenues that derive therefrom or by a use that does not appreciably alter the substance of the initial property.

1991, c. 64, s. 1259.

CHAPTER II

THE TRUST

SECTION I

NATURE OF THE TRUST

1260. A trust results from an act whereby a person, the settlor, transfers property from his patrimony to another patrimony constituted by him which he appropriates to a particular purpose and which a trustee undertakes, by his acceptance, to hold and administer.

1991, c. 64, s. 1260.

1261. The trust patrimony, consisting of the property transferred in trust, constitutes a patrimony by appropriation, autonomous and distinct from that of the settlor, trustee or beneficiary and in which none of them has any real right.

1991, c. 64, s. 1261.

1262. A trust is established by contract, whether by onerous title or gratuitously, by will, or, in certain cases, by operation of law. Where authorized by law, it may also be established by judgment.

1991, c. 64, s. 1262.

1263. The purpose of an onerous trust established by contract may be to secure the performance of an obligation. If that is the case, to have effect against third persons, the trust must be published in the register of personal and movable real rights or in the land register, according to the movable or immovable nature of the property transferred in trust.

In case of default by the settlor, the trustee is governed by the rules regarding the exercise of hypothecary rights set out in the Book on Prior Claims and Hypothecs.

1991, c. 64, s. 1263; 1998, c. 5, s. 1.

1264. A trust is constituted upon the acceptance of the trustee or of one of the trustees if there are several.

In the case of a testamentary trust, the effects of the trustee's acceptance are retroactive to

the day of death.

1991, c. 64, s. 1264.

1265. Acceptance of the trust divests the settlor of the property, charges the trustee with seeing to the appropriation of the property and the administration of the trust patrimony and is sufficient to establish the right of the beneficiary with certainty.

1991, c. 64, s. 1265.

SECTION II

VARIOUS KINDS OF TRUSTS AND THEIR DURATION

1266. Trusts are constituted for personal purposes or for purposes of private or social utility.

Provided it is designated as a trust, a trust may be identified by the name of the grantor, the trustee or the beneficiary or, in the case of a trust constituted for purposes of private or social utility, by a name which reflects its object.

1991, c. 64, s. 1266.

1267. A personal trust is constituted gratuitously for the purpose of securing a benefit for a determinate or determinable person.

1991, c. 64, s. 1267.

1268. A private trust is a trust created for the object of erecting, maintaining or preserving a thing or of using a property appropriated to a specific use, whether for the indirect benefit of a person or in his memory, or for some other private purpose.

1991, c. 64, s. 1268.

1269. A trust constituted by onerous title, particularly one created for the purpose of allowing the making of profit by means of investments, providing for retirement or procuring another benefit for the settlor or for the persons he designates or for the members of a partnership, company or association, or for employees or shareholders, is also a private trust.

1991, c. 64, s. 1269.

1270. A social trust is a trust constituted for a purpose of general interest, such as a cultural, educational, philanthropic, religious or scientific purpose.

It does not have the making of profit or the operation of an enterprise as its main object.

1991, c. 64, s. 1270.

1271. A personal trust constituted for the benefit of several persons successively may not include more than two ranks of beneficiaries of the fruits and revenues exclusive of the beneficiary of the capital; it is without effect in respect of any subsequent ranks it might contemplate.

Accretions of fruits and revenues between co-beneficiaries of the same rank are subject to the rules of substitution relating to accretions between co-institutes of the same rank.

1991, c. 64, s. 1271.

1272. The right of beneficiaries of the first rank opens not later than one hundred years after the trust is constituted, even if a longer term is stipulated. The right of beneficiaries of subsequent ranks may open later but solely for the benefit of those beneficiaries who have the required quality to receive at the expiry of one hundred years after creation of the trust.

In no case may a legal person be a beneficiary for a period exceeding one hundred years, even if a longer term is stipulated.

1991, c. 64, s. 1272.

1273. A private or social trust may be perpetual.

1991, c. 64, s. 1273.

SECTION III

ADMINISTRATION OF THE TRUST

§1. — Appointment and office of the trustee

1274. Any natural person having the full exercise of his civil rights, and any legal person authorized by law, may act as a trustee.

1991, c. 64, s. 1274.

1275. The settlor or the beneficiary may be a trustee but he shall act jointly with a trustee who is neither the settlor nor a beneficiary.

1991, c. 64, s. 1275.

1276. The settlor may appoint one or several trustees or provide the mode of their appointment or replacement.

1991, c. 64, s. 1276.

1277. The court may, at the request of an interested person and after notice has been given to the persons it indicates, appoint a trustee where the settlor has failed to do so or where it is impossible to appoint or replace a trustee.

The court may appoint one or several other trustees where required by the conditions of the administration.

1991, c. 64, s. 1277.

1278. A trustee has the control and the exclusive administration of the trust patrimony, and the titles relating to the property of which it is composed are drawn up in his name; he has the exercise of all the rights pertaining to the patrimony and may take any proper measure to secure its appropriation.

A trustee acts as the administrator of the property of others charged with full administration.

1991, c. 64, s. 1278.

§2. — *The beneficiary and his rights*

1279. Only a person having the qualities to receive by gift or by will at the time his right opens may be the beneficiary of a trust constituted gratuitously.

Where there are several beneficiaries of the same rank, it is sufficient that one of them have such qualities to preserve the right of the others if they avail themselves of it.

1991, c. 64, s. 1279.

1280. To receive, the beneficiary of a trust shall meet the conditions required by the constituting act.

1991, c. 64, s. 1280.

1281. The settlor may reserve the right to receive the fruits and revenues or even, where such is the case, the capital of the trust, even a trust constituted by gratuitous title, or share in the benefits it procures.

1991, c. 64, s. 1281.

1282. The settlor may reserve for himself the power to appoint the beneficiaries or determine their shares, or confer it on the trustees or a third person.

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

1991, c. 64, s. 1282.

1283. The person holding the power to appoint the beneficiaries or determine their shares exercises it as he sees fit. He may change or revoke his decision for the requirements of the trust.

He may not appoint beneficiaries for his own benefit.

1991, c. 64, s. 1283.

1284. While the trust is in effect, the beneficiary has the right to require, according to the constituting act, either the provision of a benefit granted to him or the payment of both the fruits and revenues and the capital or of only one of these.

1991, c. 64, s. 1284.

1285. The beneficiary of a trust constituted by gratuitous title is presumed to have accepted the right granted to him and he is entitled to dispose of it.

He may renounce it at any time; he shall then do so by notarial act *en minute* if he is the beneficiary of a personal or private trust.

1991, c. 64, s. 1285.

1286. If the beneficiary renounces his right, or if his right lapses, it passes, according to whether he is the beneficiary of the fruits and revenues or of the capital, to the co-beneficiaries of the fruits and revenues or of the capital, in proportion to the share of each.

If he is the sole beneficiary of the fruits and revenues of his rank, his right passes, in proportion to the share of each, to the beneficiaries of the fruits and revenues of the second rank, or where there are no such beneficiaries, to the beneficiaries of the capital.

1991, c. 64, s. 1286.

§3. — *Measures of supervision and control*

1287. The administration of a trust is subject to the supervision of the settlor or of his heirs, if he has died, and of the beneficiary, even a future beneficiary.

In addition, in cases provided for by law, the administration of a private or social trust is subject, according to its object and purpose, to the supervision of the persons or bodies designated by law.

1991, c. 64, s. 1287.

1288. Upon the constitution of a private or social trust subject to the supervision of a person or body designated by law, the trustee shall file with the person or body a statement indicating, in particular, the nature, object and term of the trust and the name and address of the trustee.

The trustee shall, at the request of the person or body, allow the trust records to be examined and furnish any account, report or information requested of him.

1991, c. 64, s. 1288.

1289. The rights of the beneficiary of a personal trust, if he is not yet conceived, are exercised by the person who, having been designated by the settlor to act as curator, accepts the office or, failing him, by the person appointed by the court on the application of the trustee or any interested person. The Public Curator may be designated to act.

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

1991, c. 64, s. 1289.

1290. The settlor, the beneficiary or any other interested person may, notwithstanding any stipulation to the contrary, take action against the trustee to compel him to perform his obligations or to perform any act which is necessary in the interest of the trust, to enjoin him to abstain from any action harmful to the trust or to have him removed.

He may also impugn any acts performed by the trustee in fraud of the trust patrimony or the rights of the beneficiary.

1991, c. 64, s. 1290.

1291. The court may authorize the settlor, the beneficiary or any other interested person to take legal action in the place and stead of the trustee when, without sufficient reason, he refuses or neglects to act or is prevented from acting.

1991, c. 64, s. 1291.

1292. The trustee, the settlor and the beneficiary are solidarily liable for acts in which they participate that are performed in fraud of the rights of the creditors of the settlor or of the trust patrimony.

1991, c. 64, s. 1292.

SECTION IV

CHANGES TO THE TRUST AND TO THE PATRIMONY

1293. Any person may increase the trust patrimony by transferring property to it by contract or by will in conformity with the rules applicable to the constitution of a trust. The person does not acquire the rights of a settlor by that fact.

The transferred property is mingled with the other property of the trust patrimony and is administered in accordance with the provisions of the constituting act.

1991, c. 64, s. 1293.

1294. Where a trust has ceased to meet the first intent of the settlor, particularly as a result of circumstances unknown to him or unforeseeable and which make the pursuit of the

purpose of the trust impossible or too onerous, the court may, on the application of an interested person, terminate the trust; the court may also, in the case of a social trust, substitute another closely related purpose for the original purpose of the trust.

Where the trust continues to meet the intent of the settlor but new measures would allow a more faithful compliance with his intent or favour the fulfilment of the trust, the court may amend the provisions of the constituting act.

1991, c. 64, s. 1294.

1295. Notice of the application shall be given to the settlor and to the trustee and, where such is the case, to the beneficiary, to the liquidator of the succession of the settlor, or his heirs, and to any other person or body designated by law, where the trust is subject to their supervision.

1991, c. 64, s. 1295.

SECTION V

TERMINATION OF THE TRUST

1296. A trust is terminated by the renunciation or lapse of the right of all the beneficiaries, both of the capital and of the fruits and revenues.

A trust is also terminated by the expiry of the term or the fulfilment of the condition, by the attainment of the purpose of the trust or by the impossibility, confirmed by the court, of attaining it.

1991, c. 64, s. 1296.

1297. At the termination of a trust, the trustee shall deliver the property to those who are entitled to it.

Where there is no beneficiary, any property remaining when the trust is terminated devolves to the settlor or his heirs.

1991, c. 64, s. 1297.

1298. The property of a social trust that terminates by the impossibility of its fulfilment devolves to a trust, to a legal person or to any other group of persons devoted to a purpose as nearly like that of the trust as possible, designated by the court on the recommendation of the trustee. The court also obtains the advice of any person or body designated by law to supervise the trust.

1991, c. 64, s. 1298.

TITLE SEVEN

ADMINISTRATION OF THE PROPERTY OF OTHERS

CHAPTER I

GENERAL PROVISIONS

1299. Any person who is charged with the administration of property or a patrimony that is not his own assumes the office of administrator of the property of others. The rules of this Title apply to every administration unless another form of administration applies under the law or the constituting act, or due to circumstances.

1991, c. 64, s. 1299.

1300. Unless the administration is gratuitous according to law, the act or the circumstances, the administrator is entitled to the remuneration fixed in the act, by usage or by law, or to the remuneration established according to the value of the services rendered.

A person acting without right or authorization is not entitled to any remuneration.

1991, c. 64, s. 1300.

CHAPTER II

KINDS OF ADMINISTRATION

SECTION I

SIMPLE ADMINISTRATION OF THE PROPERTY OF OTHERS

1301. A person charged with simple administration shall perform all the acts necessary for the preservation of the property or useful for the maintenance of the use for which the property is ordinarily destined.

1991, c. 64, s. 1301.

1302. An administrator charged with simple administration is bound to collect the fruits and revenues of the property under his administration and to exercise the rights pertaining to the property.

He collects the debts under his administration and gives valid acquittance for them; he exercises the rights pertaining to the securities administered by him, such as voting, conversion or redemption rights.

1991, c. 64, s. 1302.

1303. An administrator shall continue the use or operation of the property which produces fruits and revenues without changing its destination, unless he is authorized to make such a change by the beneficiary or, if that is prevented, by the court.

1991, c. 64, s. 1303.

1304. An administrator is bound to invest the sums of money under his administration in accordance with the rules of this Title relating to presumed sound investments.

He may likewise change any investment made before he took office or that he has made himself.

1991, c. 64, s. 1304.

1305. An administrator, with the authorization of the beneficiary or, if the beneficiary is prevented from acting, of the court, may alienate the property by onerous title or charge it with a hypothec where that is necessary for the payment of the debts, maintenance of the use for which the property is ordinarily destined, or the preservation of its value.

He may, however, alienate alone any property that is perishable or likely to depreciate rapidly.

1991, c. 64, s. 1305.

SECTION II

FULL ADMINISTRATION OF THE PROPERTY OF OTHERS

1306. A person charged with full administration shall preserve the property and make it productive, increase the patrimony or appropriate it to a purpose, where the interest of the beneficiary or the pursuit of the purpose of the trust requires it.

1991, c. 64, s. 1306.

1307. An administrator may, to perform his obligations, alienate the property by onerous title, charge it with a real right or change its destination and perform any other necessary or useful act, including any form of investment.

1991, c. 64, s. 1307.

CHAPTER III

RULES OF ADMINISTRATION

SECTION I

OBLIGATIONS OF THE ADMINISTRATOR TOWARDS THE BENEFICIARY

1308. The administrator of the property of others shall, in carrying out his duties, comply with the obligations imposed on him by law or by the constituting act. He shall act within the powers conferred on him.

He is not liable for loss of the property resulting from a superior force or from its age, its perishable nature or its normal and authorized use.

1991, c. 64, s. 1308.

1309. An administrator shall act with prudence and diligence.

He shall also act honestly and faithfully in the best interest of the beneficiary or of the object pursued.

1991, c. 64, s. 1309.

1310. No administrator may exercise his powers in his own interest or that of a third person or place himself in a position where his personal interest is in conflict with his obligations as administrator.

If the administrator himself is a beneficiary, he shall exercise his powers in the common interest, giving the same consideration to his own interest as to that of the other beneficiaries.

1991, c. 64, s. 1310.

1311. An administrator shall, without delay, declare to the beneficiary any interest he has in an enterprise that could place him in a position of conflict of interest and of the rights he may invoke against the beneficiary or in the property administered indicating, where that is the case, the nature and value of the rights. He is not bound to declare to him the interest or rights deriving from the act having given rise to the administration.

Any interest or right pertaining to the property of a trust under the supervision of a person or body designated by law is disclosed to that person or body.

1991, c. 64, s. 1311.

1312. No administrator may, in the course of his administration, become a party to a contract affecting the administered property or acquire otherwise than by succession any right in the property or against the beneficiary.

He may, nevertheless, be expressly authorized to do so by the beneficiary or, in case of impediment or if there is no determinate beneficiary, by the court.

1991, c. 64, s. 1312.

1313. No administrator may mingle the administered property with his own property.

1991, c. 64, s. 1313.

1314. No administrator may use for his benefit the property he administers or information he obtains by reason of his administration except with the consent of the beneficiary or unless it results from the law or the act constituting the administration.

1991, c. 64, s. 1314.

1315. Unless it is of the very nature of his administration to do so, no administrator may dispose gratuitously of the property entrusted to him, except property of little value disposed of in the interest of the beneficiary or of the object pursued.

No administrator may, except for valuable consideration, renounce any right belonging to the beneficiary or forming part of the patrimony administered.

1991, c. 64, s. 1315.

1316. An administrator may sue and be sued in respect of anything connected with his administration; he may also intervene in any action respecting the administered property.

1991, c. 64, s. 1316.

1317. If there are several beneficiaries of the administration, concurrently or successively, the administrator is bound to act impartially in their regard, taking account of their respective rights.

1991, c. 64, s. 1317.

1318. The court, in appreciating the extent of the liability of an administrator and fixing the resulting damages, may reduce them in view of the circumstances in which the administration is assumed or of the fact that the administrator acts gratuitously or that he is a minor or a protected person of full age.

1991, c. 64, s. 1318.

SECTION II

OBLIGATIONS OF THE ADMINISTRATOR AND THE BENEFICIARY TOWARDS THIRD PERSONS

1319. Where an administrator binds himself, within the limits of his powers, in the name of the beneficiary or the trust patrimony, he is not personally liable towards third persons with whom he contracts.

He is liable towards them if he binds himself in his own name, subject to any rights they have against the beneficiary or the trust patrimony.

1991, c. 64, s. 1319.

1320. Where an administrator exceeds his powers, he is liable towards third persons with whom he contracts unless the third persons were sufficiently aware of that fact or unless the obligations contracted were expressly or tacitly ratified by the beneficiary.

1991, c. 64, s. 1320.

1321. An administrator who exercises alone powers that he is required to exercise jointly

with another person exceeds his powers.

He does not exceed his powers if he exercises them more advantageously than he is required to do.

1991, c. 64, s. 1321.

1322. The beneficiary is liable towards third persons for the damage caused by the fault of the administrator in carrying out his duties only up to the amount of the benefit he has derived from the act. In the case of a trust, these obligations fall back upon the trust patrimony.

1991, c. 64, s. 1322.

1323. Where a person fully capable of exercising his civil rights has given reason to believe that another person was the administrator of his property, he is liable towards third persons who in good faith have contracted with that other person, as though the property had been under administration.

1991, c. 64, s. 1323.

SECTION III

INVENTORY, SECURITY AND INSURANCE

1324. An administrator is not bound to make an inventory, to take out insurance or to furnish other security to guarantee the performance of his obligations unless required to do so by law or by the act, or, again, by the court on the application of the beneficiary or any interested person.

Where the act creates these obligations, the administrator may apply for an exemption if circumstances warrant it.

1991, c. 64, s. 1324.

1325. In making its decision upon an application, the court takes account of the value of the property administered, the situation of the parties and the other circumstances.

It may not grant the application if that would, in effect, call into question the terms of the initial agreement between the administrator and the beneficiary.

1991, c. 64, s. 1325.

1326. An administrator bound to make an inventory shall include in it a faithful and exact enumeration of all the property entrusted to his administration or constituting the administered patrimony.

Such an inventory contains the following in particular:

- (1) the description of the immovables, and a description of the movables, with indication of their value and, in the case of a universality of movable property, sufficient identification of the universality;
- (2) a description of the currency in cash and other securities;
- (3) a listing of valuable documents.

It also contains a statement of liabilities and concludes with a recapitulation of assets and liabilities.

1991, c. 64, s. 1326.

1327. The inventory is made by notarial act *en minute*. It may also be made by a private writing before two witnesses. In the latter case, the author and the witnesses sign it, indicating the date and place of execution.

1991, c. 64, s. 1327.

1328. Where the administered patrimony contains personal effects of the holder of the patrimony or, as the case may be, of the deceased, a general reference to them in the inventory is sufficient, describing only clothing, personal papers, jewelry or ordinary personal things worth over \$100 each.

1991, c. 64, s. 1328.

1329. The property described in the inventory is presumed to be in good condition on the date of preparation of the inventory, unless the administrator appends a document attesting the contrary.

1991, c. 64, s. 1329.

1330. The administrator shall furnish a copy of the inventory to the person who entrusted him with the administration and to the beneficiary of the administration, and also to every other person he knows to have an interest. He shall also, where required by law, file the inventory or notice of the closure of the inventory in the indicated place, specifying in the latter case where the inventory may be consulted.

Any interested person may contest the inventory or any item therein; he may also demand that a new inventory be prepared.

1991, c. 64, s. 1330.

1331. An administrator may insure the property entrusted to him against ordinary risks such as fire and theft at the expense of the beneficiary or trust.

He may also take out insurance guaranteeing the performance of his obligations; he does so at the expense of the beneficiary or trust if his administration is gratuitous.

1991, c. 64, s. 1331.

SECTION IV

JOINT ADMINISTRATION AND DELEGATION

1332. Where several administrators are charged with the administration, a majority of them may act unless the act or the law requires them to act jointly or in a determinate proportion.

1991, c. 64, s. 1332.

1333. Where the administrators are prevented from acting by a majority or in the specified proportion, owing to an impediment or the systematic opposition of some of them, the others may act alone for conservatory acts; they may also, with the authorization of the court, act alone for acts requiring immediate action.

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

1991, c. 64, s. 1333.

1334. Joint administrators are solidarily liable for their administration.

However, where the duties of joint administrators have been divided by law, the act or the court, and the division has been respected, each administrator is liable for his own administration only.

1991, c. 64, s. 1334.

1335. An administrator is presumed to have approved any decision made by his co-administrators. He is liable with them for the decision unless he immediately indicates his dissent to them and notifies it to the beneficiary within a reasonable time.

The administrator may be relieved of liability, however, if he proves that he was unable for serious reasons to make his dissent known to the beneficiary in due time.

1991, c. 64, s. 1335.

1336. An administrator is presumed to have approved a decision made in his absence unless he makes his dissent known to the other administrators and to the beneficiary within a reasonable time after becoming aware of the decision.

1991, c. 64, s. 1336.

1337. An administrator may delegate his duties or be represented by a third person for specific acts; however, he may not delegate generally the conduct of the administration or

the exercise of a discretionary power, except to his co-administrators.

He is accountable for the person selected by him if, among other things, he was not authorized to make the selection. If he was so authorized, he is accountable only for the care with which he selected the person and gave him instructions.

1991, c. 64, s. 1337.

1338. A beneficiary who suffers prejudice may repudiate the acts of the person mandated by the administrator if they are done contrary to the constituting act or to usage.

The beneficiary may also exercise his judicial recourses against the mandated person even where the administrator was duly empowered to give the mandate.

1991, c. 64, s. 1338.

SECTION V

PRESUMED SOUND INVESTMENTS

1339. Investments in the following are presumed sound:

- (1) titles of ownership in an immovable;
- (2) bonds or other evidences of indebtedness issued or guaranteed by Québec, Canada or a province of Canada, the United States of America or any of its member states, the International Bank for Reconstruction and Development, a municipality or a school board in Canada, or a fabrique in Québec;
- (3) bonds or other evidences of indebtedness issued by a legal person which operates a public service in Canada and which is entitled to impose a tariff for such service;
- (4) bonds or other evidences of indebtedness secured by an undertaking, towards a trustee, of Québec, Canada or a province of Canada, to pay sufficient subsidies to meet the interest and the capital on the maturity of each;
- (5) bonds or other evidences of indebtedness of a company in the following cases:
 - (a) they are secured by a hypothec ranking first on an immovable, or by securities presumed to be sound investments;
 - (b) they are secured by a hypothec ranking first on equipment and the company has regularly serviced the interest on its borrowings during the last ten financial years;
 - (c) they are issued by a company whose common or preferred shares are presumed sound investments;
- (6) bonds or other evidences of indebtedness issued by a loan society incorporated by a statute of Québec or authorized to do business in Québec under the Loan and Investment

Societies Act, provided it has been specially approved by the Government and its ordinary operations in Québec consist in making loans to municipalities or school boards and to fabriques or loans secured by hypothec ranking first on immovables situated in Québec;

(7) debts secured by hypothec on immovables in Québec:

(a) if payment of the capital and interest is guaranteed or secured by Québec, Canada or a province of Canada;

(b) if the amount of the debt is not more than seventy-five per cent of the value of the immovable property securing payment of the debt after deduction of the other debts secured by the same immovable and ranking equally with or before the debt;

(c) if the amount of the debt that exceeds seventy-five per cent of the value of the immovable by which it is secured, after deduction of the other debts secured by the same immovable and ranking equally with or before the debt, is guaranteed or secured by Québec, Canada or a province of Canada, the Central Mortgage and Housing Corporation, the Société d'habitation du Québec or a hypothec insurance policy issued by a company holding a permit under the Act respecting insurance;

(8) fully paid preferred shares issued by a company whose common shares are presumed sound investments or which, during the last five financial years, has distributed the stipulated dividend on all its preferred shares;

(9) common shares issued by a company that for three years has been meeting the timely disclosure requirements defined in the Securities Act to such extent as they are listed by a stock exchange recognized for that purpose by the Government on the recommendation of the Commission des valeurs mobilières, and when the market capitalization of the company, not considering preferred shares or blocks of shares of ten per cent or more, is higher than the amount so fixed by the Government;

(10) shares of a mutual fund and units of an unincorporated mutual fund or of a private trust, provided that sixty per cent of its portfolio consists of investments presumed sound and that the fund or trust has fulfilled in the last three years the continuous disclosure requirements specified in the Securities Act.

1991, c. 64, s. 1339; 2002, c. 19, s. 7.

1340. The administrator decides on the investments to make according to the yield and the anticipated capital gain; so far as possible, he works toward a diversified portfolio producing fixed income and variable revenues in the proportion suggested by the prevailing economic conditions.

He may not, however, acquire more than five per cent of the shares of the same company nor acquire shares, bonds or other evidences of indebtedness of a legal person or limited partnership which has failed to pay the prescribed dividends on its shares or interest on its bonds or other securities, nor grant a loan to that legal person or partnership.

1991, c. 64, s. 1340.

1341. An administrator may deposit the sums of money entrusted to him in or with a bank, a savings and credit union or any other financial institution, if the deposit is repayable on demand or on thirty days' notice.

He may also deposit the sums of money for a longer term if repayment of the deposit is fully guaranteed by the Régie de l'assurance-dépôts du Québec; otherwise, he may not do so except with the authorization of the court and on the conditions it determines.

1991, c. 64, s. 1341.

1342. An administrator may maintain the existing investments upon his taking office even if they are not presumed sound investments.

The administrator may also hold securities which, following the reorganization, winding-up or amalgamation of a legal person, replace securities he held.

1991, c. 64, s. 1342.

1343. An administrator who acts in accordance with this section is presumed to act prudently.

An administrator who makes an investment he is not authorized to make is, by that very fact and without further proof of fault, liable for any loss resulting from it.

1991, c. 64, s. 1343.

1344. Investments made in the course of administration shall be made in the name of the administrator acting in that quality.

Such investments may also be made in the name of the beneficiary, if it is also indicated that they are made by the administrator acting in that quality.

1991, c. 64, s. 1344.

SECTION VI

APPORTIONMENT OF PROFIT AND EXPENDITURE

1345. Apportionment of profit and expenditure between the beneficiary of the fruits and revenues and the beneficiary of the capital is made in accordance with the stipulations and clear intention of the constituting act.

Failing sufficient indication in the act, apportionment is made as equitably as possible, taking into account the object of the administration, the circumstances that gave rise to it and generally recognized accounting practices.

1991, c. 64, s. 1345.

1346. The revenue account is generally debited for the following expenditures and other expenditures of the same kind:

- (1) insurance premiums, the cost of minor repairs and other ordinary expenses of administration;
- (2) one-half of the remuneration of the administrator and his reasonable expenses for joint administration of the capital and fruits and revenues;
- (3) taxes payable on the administered property;
- (4) unless the court orders otherwise, costs paid to safeguard the rights of the beneficiary of the fruits and revenues and one-half of the cost of the judicial rendering of account;
- (5) amortization of the property, except property used by the beneficiary for personal purposes.

The administrator may, to maintain revenue at a regular level, spread substantial expenses over a reasonable period.

1991, c. 64, s. 1346.

1347. The capital account is generally debited for expenditures that are not debited from the revenues, including expenses pertaining to capital investment, alienation of property, and safeguard of the rights of the capital beneficiary or the right of ownership of the administered property.

Taxes on gains and other amounts attributable to capital, even where the law governing such taxes considers them to be income taxes, are also generally debited from the capital account.

1991, c. 64, s. 1347.

1348. The beneficiary of the fruits and revenues is entitled to the net income of the administered property from the date determined in the act giving rise to the administration or, if no date is determined, from the date of the beginning of the administration or that of the death which gave rise to it.

1991, c. 64, s. 1348.

1349. Fruits and revenues payable periodically are counted day by day.

Dividends and distributions of a legal person are due from the date indicated in the declaration of distribution or, failing that, from the date of the declaration.

1991, c. 64, s. 1349.

1350. At the extinction of his right, the beneficiary of the fruits and revenues is entitled to the fruits and revenues that have not been paid to him and to the portion earned but not yet

collected by the administrator.

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

1991, c. 64, s. 1350.

SECTION VII

ANNUAL ACCOUNT

1351. An administrator renders a summary account of his administration to the beneficiary at least once a year.

1991, c. 64, s. 1351.

1352. The account shall be made sufficiently detailed to allow verification of its accuracy.

Any interested person may, on a rendering of account, apply to the court for an order that the account be audited by an expert.

1991, c. 64, s. 1352.

1353. Where there are several administrators, they shall render one and the same account unless their duties have been divided by law, the act or the court, and these have been divided accordingly.

1991, c. 64, s. 1353.

1354. An administrator shall at all times allow the beneficiary to examine the books and vouchers relating to the administration.

1991, c. 64, s. 1354.

CHAPTER IV

TERMINATION OF ADMINISTRATION

SECTION I

CAUSES TERMINATING ADMINISTRATION

1355. The duties of an administrator terminate upon his death, resignation or replacement or his becoming bankrupt or being placed under protective supervision.

The duties of an administrator are also terminated where the beneficiary becomes bankrupt or is placed under protective supervision, if that affects the administered property.

1991, c. 64, s. 1355.

1356. Administration is terminated

- (1) by extinction of the right of the beneficiary in the administered property;
- (2) by expiry of the term or fulfilment of the condition stipulated in the act giving rise to the administration;
- (3) by achievement of the object of the administration or disappearance of the cause that gave rise to it.

1991, c. 64, s. 1356.

1357. An administrator may resign by giving written notice to the beneficiary and, where such is the case, his co-administrators or the person empowered to appoint an administrator in his place. Where there are no such persons or where it is impossible to give notice to them, the notice is given to the Public Curator who, if necessary, assumes the provisional administration of the property and causes a new administrator to be appointed in place of the administrator who has resigned.

The administrator of a private trust or social trust shall also notify his resignation to the person or body designated by law to supervise his administration.

1991, c. 64, s. 1357.

1358. The resignation of the administrator takes effect on the date the notice is received or on any later date indicated in the notice.

1991, c. 64, s. 1358.

1359. An administrator is bound to repair any prejudice caused by his resignation where it is submitted without a serious reason and at an inopportune moment or where it amounts to failure of duty.

1991, c. 64, s. 1359.

1360. A beneficiary who has entrusted the administration of property to another person may replace the administrator or terminate the administration, particularly by exercising his right to require that the property be returned to him on demand.

Any interested person may apply for the replacement of an administrator who is unable to discharge his duties or does not fulfil his obligations.

1991, c. 64, s. 1360.

1361. Upon the death of the administrator or his being placed under protective supervision, the liquidator of his succession, or his tutor or curator, if aware of the administration, is bound to give notice of the death or of the institution of protective supervision to the beneficiary and to the co-administrators, if any, or, in the case of a private trust or social

trust, to the person or body designated by law to supervise the administration.

The liquidator, tutor or curator is also bound, in respect of any matter already begun, to do all that is immediately necessary to prevent a loss; he shall also render account and deliver over the property to those entitled to it.

1991, c. 64, s. 1361.

1362. Obligations contracted towards third persons in good faith by an administrator who is unaware that his administration has terminated are valid and bind the beneficiary or the trust patrimony; the same rule applies to obligations contracted by the administrator after the end of the administration that are its necessary consequence or are required to prevent a loss.

The beneficiary or the trust patrimony is also bound by the obligations contracted towards third persons who were unaware that the administration had terminated.

1991, c. 64, s. 1362.

SECTION II

RENDERING OF ACCOUNT AND DELIVERY OF PROPERTY

1363. On the termination of his administration, an administrator shall render a final account of his administration to the beneficiary and, where that is the case, to the administrator replacing him or to his co-administrators. Where there are several administrators and their duties are terminated simultaneously, they shall render one and the same account, except where their duties are divided.

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

The acceptance of the account by the beneficiary closes the account.

1991, c. 64, s. 1363.

1364. An administrator may at any time and with the consent of all the beneficiaries render account by agreement.

If there is no agreement, the rendering of account is made judicially.

1991, c. 64, s. 1364.

1365. An administrator shall deliver over the administered property at the place agreed upon or, failing that, where it is.

1991, c. 64, s. 1365.

1366. An administrator shall deliver over all that he has received in the performance of his

duties, even if what he has received was not due to the beneficiary or to the trust patrimony; he is also accountable for any personal profit or benefit he has realized by using, without authorization, information he had obtained by reason of his administration.

Where an administrator has used property without authorization, he is bound to compensate the beneficiary or the trust patrimony for his use by paying an appropriate rent or the interest on the money.

1991, c. 64, s. 1366.

1367. Administration expenses, including the cost of rendering account and delivering the property, are borne by the beneficiary or the trust patrimony.

The resignation or replacement of the administrator binds the beneficiary or the trust patrimony to pay him, apart from the administration expenses, any remuneration he has earned.

1991, c. 64, s. 1367.

1368. An administrator owes interest on the balance from the close of the final account or the formal notice to produce it; the beneficiary or the trust patrimony owes interest only from the formal notice.

1991, c. 64, s. 1368.

1369. An administrator is entitled to deduct from the sums he is required to remit anything the beneficiary or the trust patrimony owes him by reason of the administration.

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

1991, c. 64, s. 1369.

1370. Where there are several beneficiaries, their obligation towards the administrator is solidary.

1991, c. 64, s. 1370.

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BOOK FIVE

OBLIGATIONS

TITLE ONE

OBLIGATIONS IN GENERAL

CHAPTER I

GENERAL PROVISIONS

1371. It is of the essence of an obligation that there be persons between whom it exists, a prestation which forms its object, and, in the case of an obligation arising out of a juridical act, a cause which justifies its existence.

1991, c. 64, s. 1371.

1372. An obligation arises from a contract or from any act or fact to which the effects of an obligation are attached by law.

An obligation may be pure and simple or subject to modalities.

1991, c. 64, s. 1372.

1373. The object of an obligation is the prestation that the debtor is bound to render to the creditor and which consists in doing or not doing something.

The debtor is bound to render a prestation that is possible and determinate or determinable and that is neither forbidden by law nor contrary to public order.

1991, c. 64, s. 1373.

1374. The prestation may relate to any property, even future property, provided that the property is determinate as to kind and determinable as to quantity.

1991, c. 64, s. 1374.

1375. The parties shall conduct themselves in good faith both at the time the obligation is created and at the time it is performed or extinguished.

1991, c. 64, s. 1375.

1376. The rules set forth in this Book apply to the State and its bodies, and to all other legal persons established in the public interest, subject to any other rules of law which may be applicable to them.

1991, c. 64, s. 1376.

CHAPTER II

CONTRACTS

SECTION I

GENERAL PROVISION

1377. The general rules set out in this chapter apply to all contracts, regardless of their nature.

Special rules for certain contracts which complement or depart from these general rules are established under Title Two of this Book.

1991, c. 64, s. 1377.

SECTION II

NATURE AND CERTAIN CLASSES OF CONTRACTS

1378. A contract is an agreement of wills by which one or several persons obligate themselves to one or several other persons to perform a prestation.

Contracts may be divided into contracts of adhesion and contracts by mutual agreement, synallagmatic and unilateral contracts, onerous and gratuitous contracts, commutative and aleatory contracts, and contracts of instantaneous performance or of successive performance; they may also be consumer contracts.

1991, c. 64, s. 1378.

1379. A contract of adhesion is a contract in which the essential stipulations were imposed or drawn up by one of the parties, on his behalf or upon his instructions, and were not negotiable.

Any contract that is not a contract of adhesion is a contract by mutual agreement.

1991, c. 64, s. 1379.

1380. A contract is synallagmatic, or bilateral, when the parties obligate themselves reciprocally, each to the other, so that the obligation of one party is correlative to the obligation of the other.

When one party obligates himself to the other without any obligation on the part of the latter, the contract is unilateral.

1991, c. 64, s. 1380.

1381. A contract is onerous when each party obtains an advantage in return for his obligation.

When one party obligates himself to the other for the benefit of the latter without obtaining any advantage in return, the contract is gratuitous.

1991, c. 64, s. 1381.

1382. A contract is commutative when, at the time it is formed, the extent of the obligations of the parties and of the advantages obtained by them in return is certain and determinate.

When the extent of the obligations or of the advantages is uncertain, the contract is aleatory.

1991, c. 64, s. 1382.

1383. Where the circumstances do not preclude the performance of the obligations of the parties at one single time, the contract is a contract of instantaneous performance.

Where the circumstances absolutely require that the obligations be performed at several different times or without interruption, the contract is a contract of successive performance.

1991, c. 64, s. 1383.

1384. A consumer contract is a contract whose field of application is delimited by legislation respecting consumer protection whereby one of the parties, being a natural person, the consumer, acquires, leases, borrows or obtains in any other manner, for personal, family or domestic purposes, property or services from the other party, who offers such property and services as part of an enterprise which he carries on.

1991, c. 64, s. 1384.

SECTION III

FORMATION OF CONTRACTS

§1. — Conditions of formation of contracts

I — General provision

1385. A contract is formed by the sole exchange of consents between persons having capacity to contract, unless, in addition, the law requires a particular form to be respected as a necessary condition of its formation, or unless the parties require the contract to take the form of a solemn agreement.

It is also of the essence of a contract that it have a cause and an object.

1991, c. 64, s. 1385.

II — Consent

1. Exchange of consents

1386. The exchange of consents is accomplished by the express or tacit manifestation of the will of a person to accept an offer to contract made to him by another person.

1991, c. 64, s. 1386.

1387. A contract is formed when and where acceptance is received by the offeror, regardless of the method of communication used, and even though the parties have agreed to reserve agreement as to secondary terms.

1991, c. 64, s. 1387.

2. Offer and acceptance

1388. An offer to contract is a proposal which contains all the essential elements of the proposed contract and in which the offeror signifies his willingness to be bound if it is accepted.

1991, c. 64, s. 1388.

1389. An offer to contract derives from the person who initiates the contract or the person who determines its content or even, in certain cases, the person who presents the last essential element of the proposed contract.

1991, c. 64, s. 1389.

1390. An offer to contract may be made to a determinate or an indeterminate person, and a term for acceptance may or may not be attached to it.

Where a term is attached, the offer may not be revoked before the term expires; if none is attached, the offer may be revoked at any time before acceptance is received by the offeror.

1991, c. 64, s. 1390.

1391. Where the offeree receives a revocation before the offer, the offer lapses, even though a term is attached to it.

1991, c. 64, s. 1391.

1392. An offer lapses if no acceptance is received by the offeror before the expiry of the specified term or, where no term is specified, before the expiry of a reasonable time; it also lapses in respect of the offeree if he has rejected it.

The death or bankruptcy of the offeror or the offeree, whether or not a term is attached to the offer, or the institution of protective supervision in respect of either of them also causes the offer to lapse, if that event occurs before acceptance is received by the offeror.

1991, c. 64, s. 1392.

1393. Acceptance which does not correspond substantially to the offer or which is received by the offeror after the offer has lapsed does not constitute acceptance.

It may, however, constitute a new offer.

1991, c. 64, s. 1393.

1394. Silence does not imply acceptance of an offer, subject only to the will of the parties, the law or special circumstances, such as usage or a prior business relationship.

1991, c. 64, s. 1394.

1395. The offer of a reward made to anyone who performs a particular act is deemed to be accepted and is binding on the offeror when the act is performed, even if the person who performs the act does not know of the offer, unless, in cases which admit of it, the offer was previously revoked expressly and adequately by the offeror.

1991, c. 64, s. 1395.

1396. An offer to contract made to a determinate person constitutes a promise to enter into the proposed contract from the moment that the offeree clearly indicates to the offeror that he intends to consider the offer and reply to it within a reasonable time or within the time stated therein.

A mere promise is not equivalent to the proposed contract; however, where the beneficiary of the promise accepts the promise or takes up his option, both he and the promisor are bound to enter into the contract, unless the beneficiary decides to enter into the contract immediately.

1991, c. 64, s. 1396.

1397. A contract made in violation of a promise to contract may be set up against the beneficiary of the promise, but without affecting his remedy for damages against the promisor and the person having contracted in bad faith with the promisor.

The same rule applies to a contract made in violation of a first refusal agreement.

1991, c. 64, s. 1397.

3. Qualities and defects of consent

1398. Consent may be given only by a person who, at the time of manifesting such consent, either expressly or tacitly, is capable of binding himself.

1991, c. 64, s. 1398.

1399. Consent may be given only in a free and enlightened manner.

It may be vitiated by error, fear or lesion.

1991, c. 64, s. 1399.

1400. Error vitiates consent of the parties or of one of them where it relates to the nature of the contract, the object of the prestation or anything that was essential in determining that consent.

An inexcusable error does not constitute a defect of consent.

1991, c. 64, s. 1400.

1401. Error on the part of one party induced by fraud committed by the other party or with his knowledge vitiates consent whenever, but for that error, the party would not have contracted, or would have contracted on different terms.

Fraud may result from silence or concealment.

1991, c. 64, s. 1401.

1402. Fear of serious injury to the person or property of one of the parties vitiates consent given by that party where the fear is induced by violence or threats exerted or made by or known to the other party.

Apprehended injury may also relate to another person or his property and is appraised according to the circumstances.

1991, c. 64, s. 1402.

1403. Fear induced by the abusive exercise of a right or power or by the threat of such exercise vitiates consent.

1991, c. 64, s. 1403.

1404. Consent to a contract the object of which is to deliver the person making it from fear of serious injury is not vitiated where the other contracting party, although aware of the state of necessity, is acting in good faith.

1991, c. 64, s. 1404.

1405. Except in the cases expressly provided by law, lesion vitiates consent only in respect of minors and persons of full age under protective supervision.

1991, c. 64, s. 1405.

1406. Lesion results from the exploitation of one of the parties by the other, which creates a serious disproportion between the prestations of the parties; the fact that there is a serious disproportion creates a presumption of exploitation.

In cases involving a minor or a protected person of full age, lesion may also result from an obligation that is considered to be excessive in view of the patrimonial situation of the person, the advantages he gains from the contract and the general circumstances.

1991, c. 64, s. 1406.

1407. A person whose consent is vitiated has the right to apply for annulment of the contract; in the case of error occasioned by fraud, of fear or of lesion, he may, in addition to annulment, also claim damages or, where he prefers that the contract be maintained, apply for a reduction of his obligation equivalent to the damages he would be justified in claiming.

1991, c. 64, s. 1407.

1408. In the case of a demand for the annulment of a contract on the ground of lesion, the court may maintain the contract where the defendant offers a reduction of his claim or an equitable pecuniary supplement.

1991, c. 64, s. 1408.

III — Capacity to contract

1409. The rules relating to the capacity to contract are laid down principally in the Book on Persons.

1991, c. 64, s. 1409.

IV — Cause of contracts

1410. The cause of a contract is the reason that determines each of the parties to enter into the contract.

The cause need not be expressed.

1991, c. 64, s. 1410.

1411. A contract whose cause is prohibited by law or contrary to public order is null.

1991, c. 64, s. 1411.

V — Object of contracts

1412. The object of a contract is the juridical operation envisaged by the parties at the time of its formation, as it emerges from all the rights and obligations created by the contract.

1991, c. 64, s. 1412.

1413. A contract whose object is prohibited by law or contrary to public order is null.

1991, c. 64, s. 1413.

VI — Form of contracts

1414. Where a particular or solemn form is required as a necessary condition of formation of a contract, it shall be observed; it shall also be observed for modifications to the contract, unless they are only accessory stipulations.

1991, c. 64, s. 1414.

1415. A promise to enter into a contract is not subject to the form required for the contract.

1991, c. 64, s. 1415.

§2. — *Sanction of conditions of formation of contracts*

I — Nature of nullity

1416. Any contract which does not meet the necessary conditions of its formation may be annulled.

1991, c. 64, s. 1416.

1417. A contract is absolutely null where the condition of formation sanctioned by its nullity is necessary for the protection of the general interest.

1991, c. 64, s. 1417.

1418. The absolute nullity of a contract may be invoked by any person having a present and actual interest in doing so; it is invoked by the court of its own motion.

A contract that is absolutely null may not be confirmed.

1991, c. 64, s. 1418.

1419. A contract is relatively null where the condition of formation sanctioned by its nullity is necessary for the protection of an individual interest, such as where the consent of the parties or of one of them is vitiated.

1991, c. 64, s. 1419.

1420. The relative nullity of a contract may be invoked only by the person in whose interest it is established or by the other contracting party, provided he is acting in good faith and sustains serious injury therefrom; it may not be invoked by the court of its own motion.

A contract that is relatively null may be confirmed.

1991, c. 64, s. 1420.

1421. Unless the nature of the nullity is clearly indicated in the law, a contract which does not meet the necessary conditions of its formation is presumed to be relatively null.

1991, c. 64, s. 1421.

II — Effect of nullity

1422. A contract that is null is deemed never to have existed.

In such a case, each party is bound to restore to the other the prestations he has received.

1991, c. 64, s. 1422.

III — Confirmation of the contract

1423. The confirmation of a contract results from the express or tacit will to renounce the invocation of its nullity.

It results only if the will to confirm is certain and evident.

1991, c. 64, s. 1423.

1424. Where the nullity of a contract may be invoked by each of the parties or by several of them against a common opposite party to the contract, confirmation by one of them does not prevent the others from invoking nullity.

1991, c. 64, s. 1424.

SECTION IV

INTERPRETATION OF CONTRACTS

1425. The common intention of the parties rather than adherence to the literal meaning of the words shall be sought in interpreting a contract.

1991, c. 64, s. 1425.

1426. In interpreting a contract, the nature of the contract, the circumstances in which it was formed, the interpretation which has already been given to it by the parties or which it may have received, and usage, are all taken into account.

1991, c. 64, s. 1426.

1427. Each clause of a contract is interpreted in light of the others so that each is given the meaning derived from the contract as a whole.

1991, c. 64, s. 1427.

1428. A clause is given a meaning that gives it some effect rather than one that gives it no effect.

1991, c. 64, s. 1428.

1429. Words susceptible of two meanings shall be given the meaning that best conforms to the subject matter of the contract.

1991, c. 64, s. 1429.

1430. A clause intended to eliminate doubt as to the application of the contract to a specific situation does not restrict the scope of a contract otherwise expressed in general terms.

1991, c. 64, s. 1430.

1431. The clauses of a contract cover only what it appears that the parties intended to include, however general the terms used.

1991, c. 64, s. 1431.

1432. In case of doubt, a contract is interpreted in favour of the person who contracted the obligation and against the person who stipulated it. In all cases, it is interpreted in favour of the adhering party or the consumer.

1991, c. 64, s. 1432.

SECTION V

EFFECTS OF CONTRACTS

§1. — *Effects of contracts between the parties*

I — General provision

1433. A contract creates obligations and, in certain cases, modifies or extinguishes them.

In some cases, it also has the effect of constituting, transferring, modifying or extinguishing real rights.

1991, c. 64, s. 1433.

II — Binding force and content of contracts

1434. A contract validly formed binds the parties who have entered into it not only as to what they have expressed in it but also as to what is incident to it according to its nature and in conformity with usage, equity or law.

1991, c. 64, s. 1434.

1435. An external clause referred to in a contract is binding on the parties.

In a consumer contract or a contract of adhesion, however, an external clause is null if, at the time of formation of the contract, it was not expressly brought to the attention of the consumer or adhering party, unless the other party proves that the consumer or adhering party otherwise knew of it.

1991, c. 64, s. 1435.

1436. In a consumer contract or a contract of adhesion, a clause which is illegible or incomprehensible to a reasonable person is null if the consumer or the adhering party suffers injury therefrom, unless the other party proves that an adequate explanation of the nature and scope of the clause was given to the consumer or adhering party.

1991, c. 64, s. 1436.

1437. An abusive clause in a consumer contract or contract of adhesion is null, or the obligation arising from it may be reduced.

An abusive clause is a clause which is excessively and unreasonably detrimental to the consumer or the adhering party and is therefore not in good faith; in particular, a clause which so departs from the fundamental obligations arising from the rules normally governing the contract that it changes the nature of the contract is an abusive clause.

1991, c. 64, s. 1437.

1438. A clause which is null does not render the contract invalid in other respects, unless it

is apparent that the contract may be considered only as an indivisible whole.

The same applies to a clause without effect or deemed unwritten.

1991, c. 64, s. 1438.

1439. A contract may not be resolved, resiliated, modified or revoked except on grounds recognized by law or by agreement of the parties.

1991, c. 64, s. 1439.

§2. — *Effects of contracts with respect to third persons*

I — General provisions

1440. A contract has effect only between the contracting parties; it does not affect third persons, except where provided by law.

1991, c. 64, s. 1440.

1441. Upon the death of one of the parties, the rights and obligations arising from a contract pass to his heirs, if the nature of the contract permits it.

1991, c. 64, s. 1441.

1442. The rights of the parties to a contract pass to their successors by particular title if they are accessory to property which passes to them or are directly related to it.

1991, c. 64, s. 1442.

II — Promise for another

1443. No person may bind anyone but himself and his heirs by a contract made in his own name, but he may promise in his own name that a third person will undertake to perform an obligation, and in that case he is liable to reparation for injury to the other contracting party if the third person does not undertake to perform the obligation as promised.

1991, c. 64, s. 1443.

III — Stipulation for another

1444. A person may make a stipulation in a contract for the benefit of a third person.

The stipulation gives the third person beneficiary the right to exact performance of the promised obligation directly from the promisor.

1991, c. 64, s. 1444.

1445. A third person beneficiary need not exist nor be determinate when the stipulation is

made; he need only be determinable at that time and exist when the promisor is to perform the obligation for his benefit.

1991, c. 64, s. 1445.

1446. The stipulation may be revoked as long as the third person beneficiary has not advised the stipulator or the promisor of his will to accept it.

1991, c. 64, s. 1446.

1447. Only the stipulator may revoke a stipulation; neither his heirs nor his creditors may do so.

If the promisor has an interest in maintaining the stipulation, however, the stipulator may not revoke it without his consent.

1991, c. 64, s. 1447.

1448. Revocation of the stipulation has effect as soon as it is made known to the promisor; if it is made by will, however, it has effect upon the opening of the succession.

Where a new beneficiary is not designated, revocation benefits the stipulator or his heirs.

1991, c. 64, s. 1448.

1449. A third person beneficiary or his heirs may validly accept the stipulation, even after the death of the stipulator or promisor.

1991, c. 64, s. 1449.

1450. A promisor may set up against the third person beneficiary such defenses as he could have set up against the stipulator.

1991, c. 64, s. 1450.

IV — Simulation

1451. Simulation exists where the parties agree to express their true intent, not in an apparent contract, but in a secret contract, also called a counter letter.

Between the parties, a counter letter prevails over an apparent contract.

1991, c. 64, s. 1451.

1452. Third persons in good faith may, according to their interest, avail themselves of the apparent contract or the counter letter; however, where conflicts of interest arise between them, preference is given to the person who avails himself of the apparent contract.

1991, c. 64, s. 1452.

§3. — *Special effects of certain contracts*

I — Transfer of real rights

1453. The transfer of a real right in a certain and determinate property, or in several properties considered as a universality, vests the acquirer with the right upon the formation of the contract, even though the property is not delivered immediately and the price remains to be determined.

The transfer of a real right in a property determined only as to kind vests the acquirer with that right as soon as he is notified that the property is certain and determinate.

1991, c. 64, s. 1453.

1454. If a party transfers the same real right in the same movable property to different acquirers successively, the acquirer in good faith who is first given possession of the property is vested with the real right in that property, even though his title may be later in time.

1991, c. 64, s. 1454.

1455. The transfer of a real right in an immovable property may not be set up against third persons except in accordance with the rules concerning the publication of rights.

1991, c. 64, s. 1455.

II — Fruits and revenues and risks incident to property

1456. The allocation of fruits and revenues and the assumption of risks incident to property forming the object of a real right transferred by contract are principally governed by the Book on Property.

The debtor of the obligation to deliver the property continues, however, to bear the risks attached to the property until it is delivered.

1991, c. 64, s. 1456.

CHAPTER III

CIVIL LIABILITY

SECTION I

CONDITIONS OF LIABILITY

§1. — *General provisions*

1457. Every person has a duty to abide by the rules of conduct which lie upon him,

according to the circumstances, usage or law, so as not to cause injury to another.

Where he is endowed with reason and fails in this duty, he is responsible for any injury he causes to another person by such fault and is liable to reparation for the injury, whether it be bodily, moral or material in nature.

He is also liable, in certain cases, to reparation for injury caused to another by the act or fault of another person or by the act of things in his custody.

1991, c. 64, s. 1457; 2002, c. 19, s. 15.

1458. Every person has a duty to honour his contractual undertakings.

Where he fails in this duty, he is liable for any bodily, moral or material injury he causes to the other contracting party and is liable to reparation for the injury; neither he nor the other party may in such a case avoid the rules governing contractual liability by opting for rules that would be more favourable to them.

1991, c. 64, s. 1458.

§2. — Act or fault of another

1459. A person having parental authority is liable to reparation for injury caused to another by the act or fault of the minor under his authority, unless he proves that he himself did not commit any fault with regard to the custody, supervision or education of the minor.

A person deprived of parental authority is liable in the same manner, if the act or fault of the minor is related to the education he has given to him.

1991, c. 64, s. 1459.

1460. A person who, without having parental authority, is entrusted, by delegation or otherwise, with the custody, supervision or education of a minor is liable, in the same manner as the person having parental authority, to reparation for injury caused by the act or fault of the minor.

Where he is acting gratuitously or for reward, however, he is not liable unless it is proved that he has committed a fault.

1991, c. 64, s. 1460.

1461. Any person who, as tutor or curator or in any other quality, has custody of a person of full age who is not endowed with reason, is not liable to reparation for injury caused by any act of the person of full age, except where he is himself guilty of a deliberate or gross fault in exercising custody.

1991, c. 64, s. 1461.

1462. No person is liable for injury caused to another by an act or omission of a person not

endowed with reason except in the cases where the conduct of the person not endowed with reason would otherwise have been considered wrongful.

1991, c. 64, s. 1462.

1463. The principal is liable to reparation for injury caused by the fault of his agents and servants in the performance of their duties; nevertheless, he retains his recourses against them.

1991, c. 64, s. 1463.

1464. An agent or servant of the State or of a legal person established in the public interest does not cease to act in the performance of his duties by the mere fact that he performs an act that is illegal, unauthorized or outside his competence, or by the fact that he is acting as a peace officer.

1991, c. 64, s. 1464.

§3. — *Act of a thing*

1465. A person entrusted with the custody of a thing is liable to reparation for injury resulting from the autonomous act of the thing, unless he proves that he is not at fault.

1991, c. 64, s. 1465.

1466. The owner of an animal is liable to reparation for injury it has caused, whether the animal was under his custody or that of a third person, or had strayed or escaped.

A person making use of the animal is, together with the owner, also liable during that time.

1991, c. 64, s. 1466.

1467. The owner of an immovable, without prejudice to his liability as custodian, is liable to reparation for injury caused by its ruin, even partial, where this has resulted from lack of repair or from a defect of construction.

1991, c. 64, s. 1467.

1468. The manufacturer of a movable property is liable to reparation for injury caused to a third person by reason of a safety defect in the thing, even if it is incorporated with or placed in an immovable for the service or operation of the immovable.

The same rule applies to a person who distributes the thing under his name or as his own and to any supplier of the thing, whether a wholesaler or a retailer and whether or not he imported the thing.

1991, c. 64, s. 1468.

1469. A thing has a safety defect where, having regard to all the circumstances, it does not

afford the safety which a person is normally entitled to expect, particularly by reason of a defect in the design or manufacture of the thing, poor preservation or presentation of the thing, or the lack of sufficient indications as to the risks and dangers it involves or as to safety precautions.

1991, c. 64, s. 1469.

SECTION II

CERTAIN CASES OF EXEMPTION FROM LIABILITY

1470. A person may free himself from his liability for injury caused to another by proving that the injury results from superior force, unless he has undertaken to make reparation for it.

A superior force is an unforeseeable and irresistible event, including external causes with the same characteristics.

1991, c. 64, s. 1470.

1471. Where a person comes to the assistance of another person or, for an unselfish motive, disposes, free of charge, of property for the benefit of another person, he is exempt from all liability for injury that may result from it, unless the injury is due to his intentional or gross fault.

1991, c. 64, s. 1471.

1472. A person may free himself from his liability for injury caused to another as a result of the disclosure of a trade secret by proving that considerations of general interest prevailed over keeping the secret and, particularly, that its disclosure was justified for reasons of public health or safety.

1991, c. 64, s. 1472.

1473. The manufacturer, distributor or supplier of a movable property is not liable to reparation for injury caused by a safety defect in the property if he proves that the victim knew or could have known of the defect, or could have foreseen the injury.

Nor is he liable to reparation if he proves that, according to the state of knowledge at the time that he manufactured, distributed or supplied the property, the existence of the defect could not have been known, and that he was not neglectful of his duty to provide information when he became aware of the defect.

1991, c. 64, s. 1473; 2002, c. 19, s. 15.

1474. A person may not exclude or limit his liability for material injury caused to another through an intentional or gross fault; a gross fault is a fault which shows gross recklessness, gross carelessness or gross negligence.

He may not in any way exclude or limit his liability for bodily or moral injury caused to

another.

1991, c. 64, s. 1474.

1475. A notice, whether posted or not, stipulating the exclusion or limitation of the obligation to make reparation for injury resulting from the nonperformance of a contractual obligation has effect, in respect of the creditor, only if the party who invokes the notice proves that the other party was aware of its existence at the time the contract was formed.

1991, c. 64, s. 1475.

1476. A person may not by way of a notice exclude or limit his obligation to make reparation in respect of third persons; such a notice may, however, constitute a warning of a danger.

1991, c. 64, s. 1476.

1477. The assumption of risk by the victim, although it may be considered imprudent having regard to the circumstances, does not entail renunciation of his remedy against the person who caused the injury.

1991, c. 64, s. 1477.

SECTION III

APPORTIONMENT OF LIABILITY

1478. Where an injury has been caused by several persons, liability is shared by them in proportion to the seriousness of the fault of each.

The victim is included in the apportionment when the injury is partly the effect of his own fault.

1991, c. 64, s. 1478.

1479. A person who is liable to reparation for an injury is not liable in respect of any aggravation of the injury that the victim could have avoided.

1991, c. 64, s. 1479.

1480. Where several persons have jointly taken part in a wrongful act which has resulted in injury or have committed separate faults each of which may have caused the injury, and where it is impossible to determine, in either case, which of them actually caused it, they are solidarily liable for reparation thereof.

1991, c. 64, s. 1480.

1481. Where an injury has been caused by several persons and one of them is exempted from all liability by an express provision of a special Act, the share of the liability which

would have been his is assumed equally by the other persons liable for the injury.

1991, c. 64, s. 1481.

CHAPTER IV

CERTAIN OTHER SOURCES OF OBLIGATIONS

SECTION I

MANAGEMENT OF THE BUSINESS OF ANOTHER

1482. Management of the business of another exists where a person, the manager, spontaneously and under no obligation to act, voluntarily and opportunely undertakes to manage the business of another, the principal, without his knowledge, or with his knowledge if he was unable to appoint a mandatary or otherwise provide for it.

1991, c. 64, s. 1482.

1483. The manager shall as soon as possible inform the principal of the management he has undertaken.

1991, c. 64, s. 1483.

1484. The manager is bound to continue the management undertaken until he can withdraw without risk of loss or until the principal, or his tutor or curator, or the liquidator of the succession, as the case may be, is able to provide for it.

The manager is in all other respects of the administration subject to the general obligations of an administrator of the property of another entrusted with simple administration, so far as they are not incompatible, having regard to the circumstances.

1991, c. 64, s. 1484.

1485. The liquidator of the succession of the manager who is aware of the management is bound to do only what is necessary, in business already begun, to avoid loss; he shall immediately account to the principal.

1991, c. 64, s. 1485.

1486. When the conditions of management of the business of another are fulfilled, even if the desired result has not been attained, the principal shall reimburse the manager for all the necessary or useful expenses he has incurred and indemnify him for any injury he has suffered by reason of his management and not through his own fault.

The principal shall also fulfil any necessary or useful obligations that the manager has contracted with third persons in his name or for his benefit.

1991, c. 64, s. 1486.

1487. Expenses or obligations are assessed as to their necessity or usefulness at the time they were incurred or contracted by the manager.

1991, c. 64, s. 1487.

1488. Disbursements made by the manager in respect of an immovable belonging to the principal are treated according to the rules established for those made by a possessor in good faith.

1991, c. 64, s. 1488.

1489. A manager acting in his own name is bound towards third persons with whom he contracts, without prejudice to his or their remedies against the principal.

A manager acting in the name of the principal is bound towards third persons with whom he contracts only so far as the principal is not bound towards them.

1991, c. 64, s. 1489.

1490. Management inopportunistically undertaken by a manager is binding on the principal only to the extent of his enrichment.

1991, c. 64, s. 1490.

SECTION II

RECEPTION OF A THING NOT DUE

1491. A person who receives a payment made in error, or merely to avoid injury to the person making it while protesting that he owes nothing, is obliged to restore it.

He is not obliged to restore it, however, where, in consequence of the payment, the claim of the person who received the undue payment in good faith is prescribed or the person has destroyed his title or relinquished a security, saving the remedy of the person having made the payment against the true debtor.

1991, c. 64, s. 1491.

1492. Restitution of payments not due is made according to the rules of restitution of prestations.

1991, c. 64, s. 1492.

SECTION III

UNJUST ENRICHMENT

1493. A person who is enriched at the expense of another shall, to the extent of his

enrichment, indemnify the other for his correlative impoverishment, if there is no justification for the enrichment or the impoverishment.

1991, c. 64, s. 1493.

1494. Enrichment or impoverishment is justified where it results from the performance of an obligation, from the failure of the person impoverished to exercise a right of which he may avail himself or could have availed himself against the person enriched, or from an act performed by the person impoverished for his personal and exclusive interest or at his own risk and peril, or with a constant liberal intention.

1991, c. 64, s. 1494.

1495. An indemnity is due only if the enrichment continues to exist on the day of the demand.

Both the value of the enrichment and that of the impoverishment are assessed on the day of the demand; however, where the circumstances indicate the bad faith of the person enriched, the enrichment may be assessed at the time the person was enriched.

1991, c. 64, s. 1495.

1496. Where the person enriched disposes of his enrichment gratuitously, with no intention of defrauding the person impoverished, the action of the person impoverished may be taken against the third person beneficiary if the latter could have known of the impoverishment.

1991, c. 64, s. 1496.

CHAPTER V

MODALITIES OF OBLIGATIONS

SECTION I

SIMPLE MODALITIES

§1. — Conditional obligations

1497. An obligation is conditional where it is made to depend upon a future and uncertain event, either by suspending it until the event occurs or is certain not to occur, or by making its extinction dependent on whether or not the event occurs.

1991, c. 64, s. 1497.

1498. An obligation is not conditional if it or its extinction depends on an event that, unknown to the parties, had already occurred at the time that the debtor obligated himself conditionally.

1991, c. 64, s. 1498.

1499. A condition upon which an obligation depends is one that is possible and neither unlawful nor contrary to public order; otherwise, it is null and renders null the obligation that depends upon it.

1991, c. 64, s. 1499.

1500. An obligation that depends upon a condition that is at the sole discretion of the debtor is null; however, if the condition consists in doing or not doing something, the obligation is valid, even where the act is at the discretion of the debtor.

1991, c. 64, s. 1500.

1501. If no time has been fixed for fulfillment of a condition, the condition may be fulfilled at any time; the condition fails, however, if it becomes certain that it will not be fulfilled.

1991, c. 64, s. 1501.

1502. Where an obligation is dependent on the condition that an event will not occur within a given time, the condition is considered fulfilled once the time has elapsed without the event having occurred, and also when, before the time has elapsed, it becomes certain that the event will not occur.

Where no time has been fixed, the condition is not considered fulfilled until it becomes certain that the event will not occur.

1991, c. 64, s. 1502.

1503. A conditional obligation becomes absolute when the debtor whose obligation is subject to the condition prevents it from being fulfilled.

1991, c. 64, s. 1503.

1504. The creditor, pending fulfillment of the condition, may take any useful measures to preserve his rights.

1991, c. 64, s. 1504.

1505. The conditional nature of an obligation does not prevent it from being transferable or transmissible.

1991, c. 64, s. 1505.

1506. The fulfillment of a condition has a retroactive effect, between the parties and with respect to third persons, to the day on which the debtor obligated himself conditionally.

1991, c. 64, s. 1506.

1507. The fulfillment of a suspensive condition obliges the debtor to perform the

obligation, as though it had existed from the day on which he obligated himself under that condition.

The fulfillment of a resolutive condition obliges each party to return to the other the prestations he has received pursuant to the obligation, as though the obligation had never existed.

1991, c. 64, s. 1507.

§2. — *Obligations with a term*

1508. An obligation with a suspensive term is an existing obligation that does not become exigible until the occurrence of a future and certain event.

1991, c. 64, s. 1508.

1509. Where the obligation does not become exigible until the expiry of a period of time but no specific date is mentioned, the first day of the period is not counted, but the day of its expiry is counted.

1991, c. 64, s. 1509.

1510. If an event that was considered certain does not occur, the obligation is exigible from the day on which the event normally should have occurred.

1991, c. 64, s. 1510.

1511. A term is for the benefit of the debtor, unless it is apparent from the law, the intent of the parties or the circumstances that it has been stipulated for the benefit of the creditor or both parties.

The party for whose exclusive benefit a term has been stipulated may renounce it, without the consent of the other party.

1991, c. 64, s. 1511.

1512. Where the parties have agreed to delay the determination of the term or to leave it to one of them to make such determination and where, after a reasonable time, no term has been determined, the court may, upon the application of one of the parties, fix the term according to the nature of the obligation, the situation of the parties and the circumstances.

The court may also fix the term where a term is required by the nature of the obligation and there is no agreement as to how it may be determined.

1991, c. 64, s. 1512.

1513. What is due with a term may not be exacted before the term expires, but anything performed freely and without error before the expiry of the term may not be recovered.

1991, c. 64, s. 1513.

1514. A debtor loses the benefit of the term if he becomes insolvent, is declared bankrupt, or, by his own act and without the consent of the creditor, reduces the security he has given to him.

He also loses the benefit of the term if he fails to meet the conditions in consideration of which it was granted to him.

1991, c. 64, s. 1514.

1515. Renunciation of the benefit of the term or forfeiture of the term renders the obligation exigible immediately.

1991, c. 64, s. 1515.

1516. Forfeiture of the term incurred by one of the debtors, even a solidary debtor, may not be set up against the other co-debtors.

1991, c. 64, s. 1516.

1517. An obligation with an extinctive term is an obligation which has a duration fixed by law or by the parties and which is extinguished by expiry of the term.

1991, c. 64, s. 1517.

SECTION II

COMPLEX MODALITIES

§1. — Obligations with multiple persons

I — Joint, divisible and indivisible obligations

1518. An obligation is joint between two or more debtors where they are obligated to the creditor for the same thing but in such a way that each debtor may only be compelled to perform the obligation separately and only up to his share of the debt.

An obligation is joint between two or more creditors where each creditor may only exact the performance of his share of the claim from the common debtor.

1991, c. 64, s. 1518.

1519. An obligation is divisible by operation of law, unless it is expressly stipulated that it is indivisible or unless the object of the obligation, owing to its nature, is not susceptible of division either materially or intellectually.

1991, c. 64, s. 1519.

1520. An indivisible obligation is not susceptible of division, either between the creditors

or the debtors or between their heirs.

Each of the debtors or of his heirs may separately be compelled to perform the whole obligation and, conversely, each of the creditors or of his heirs may exact the performance of the whole obligation, even though the obligation is not solidary.

1991, c. 64, s. 1520.

1521. A stipulation of solidarity does not make an obligation indivisible.

1991, c. 64, s. 1521.

1522. A divisible obligation binding only one debtor and one creditor may be performed between them only as if it were indivisible, but it remains divisible between the heirs.

1991, c. 64, s. 1522.

II — Solidary obligations

1. Solidarity between debtors

1523. An obligation is solidary between the debtors where they are obligated to the creditor for the same thing in such a way that each of them may be compelled separately to perform the whole obligation and where performance by a single debtor releases the others towards the creditor.

1991, c. 64, s. 1523.

1524. An obligation may be solidary even though one of the co-debtors is obliged differently from the others to perform the same thing, such as where one is conditionally bound while the obligation of the other is not conditional, or where one is allowed a term which is not granted to the other.

1991, c. 64, s. 1524.

1525. Solidarity between debtors is not presumed; it exists only where it is expressly stipulated by the parties or imposed by law.

Solidarity between debtors is presumed, however, where an obligation is contracted for the service or carrying on of an enterprise.

The carrying on by one or more persons of an organized economic activity, whether or not it is commercial in nature, consisting of producing, administering or alienating property, or providing a service, constitutes the carrying on of an enterprise.

1991, c. 64, s. 1525.

1526. The obligation to make reparation for injury caused to another through the fault of two or more persons is solidary where the obligation is extra-contractual.

1991, c. 64, s. 1526.

1527. Where specific performance of an obligation has become impossible through the fault of one or more of the solidary debtors, or after he or they have been put in default, the other co-debtors are not released from their obligation to make an equivalent payment to the creditor, but they are not liable for additional damages which may be owed to him.

The creditor may not claim additional damages except from those co-debtors through whose fault the obligation became impossible to perform, and from those who were then in default.

1991, c. 64, s. 1527.

1528. The creditor of a solidary obligation may apply for payment to any one of the co-debtors at his option, without such debtor having a right to plead the benefit of division.

1991, c. 64, s. 1528.

1529. Proceedings instituted against one of the solidary debtors do not deprive the creditor of his remedy against the others, but the debtor sued may implead the other solidary debtors.

1991, c. 64, s. 1529.

1530. A solidary debtor who is sued by his creditor may set up all the defenses against him that are personal to him or that are common to all the co-debtors, but he may not set up defenses that are purely personal to one or several of the other co-debtors.

1991, c. 64, s. 1530.

1531. Where, through the act of the creditor, a solidary debtor is deprived of a security or of a right which he could have set up by subrogation, he is released to the extent of the value of the security or right of which he is deprived.

1991, c. 64, s. 1531.

1532. A creditor who renounces solidarity in favour of one of the debtors retains his solidary remedy against the other debtors for the whole debt.

1991, c. 64, s. 1532.

1533. A creditor who receives separately and without reserve the share of one of the solidary debtors and specifies in the acquittance that it applies to that share renounces solidarity in favour of that debtor alone.

1991, c. 64, s. 1533.

1534. Where a creditor receives separately and without reserve the share of one of the debtors in the periodic payments or interest on the debt and specifies in the acquittance that it applies to his share, he loses his solidary remedy against that debtor for the periodic

payments or interest due, but not for any that may become due in the future, nor for the capital, unless separate payment is continued for three consecutive years.

1991, c. 64, s. 1534.

1535. A creditor who sues a solidary debtor for his share loses his solidary remedy against him if the debtor acquiesces in the demand or is condemned by judgment.

1991, c. 64, s. 1535.

1536. A solidary debtor who has performed the obligation may not recover from his co-debtors more than their respective shares, although he is subrogated to the rights of the creditor.

1991, c. 64, s. 1536.

1537. Contribution to the payment of a solidary obligation is made by equal shares among the solidary debtors, unless their interests in the debt, including their shares of the obligation to make reparation for injury caused to another, are unequal, in which case their contributions are proportional to the interest of each in the debt.

However, if the obligation was contracted in the exclusive interest of one of the debtors or if it is due to the fault of one co-debtor alone, he is liable for the whole debt to the other co-debtors, who are then considered, in his regard, as his sureties.

1991, c. 64, s. 1537.

1538. A loss arising from the insolvency of a solidary debtor is equally divided between the other co-debtors, unless their interests in the debt are unequal.

A creditor who has renounced solidarity in favour of one debtor, however, bears the share of that debtor in the contribution.

1991, c. 64, s. 1538.

1539. A solidary debtor sued for reimbursement by the co-debtor who has performed the obligation may raise any common defenses that have not been set up by the co-debtor against the creditor. He may also set up defenses which are personal to himself, but not those which are purely personal to one or several of the other co-debtors.

1991, c. 64, s. 1539.

1540. The obligation of a solidary debtor is divided by operation of law between his heirs, except where it is indivisible.

1991, c. 64, s. 1540.

2. Solidarity between creditors

1541. Solidarity between creditors exists only where it has been expressly stipulated.

It entitles each of them to exact the whole performance of the obligation from the debtor and to give a full acquittance for it.

1991, c. 64, s. 1541.

1542. Performance of an obligation in favour of one of the solidary creditors releases the debtor towards the other creditors.

1991, c. 64, s. 1542.

1543. A debtor has the option of performing the obligation in favour of any of the solidary creditors, provided he has not been sued by any of them.

A release from the obligation granted by one of the solidary creditors releases the debtor, but only for the portion of that creditor. The same rule applies to all cases in which the obligation is extinguished otherwise than by payment thereof.

1991, c. 64, s. 1543.

1544. An obligation for the benefit of a solidary creditor is divided by operation of law between his heirs.

1991, c. 64, s. 1544.

§2. — *Obligations with multiple objects*

I — **Alternative obligations**

1545. An alternative obligation is one which has two principal prestations as its object, the performance of either of which releases the debtor for the whole.

An obligation is not considered to be alternative if, when it arose, one of the prestations could not be the object of the obligation.

1991, c. 64, s. 1545.

1546. The choice of the prestation belongs to the debtor, unless it has been expressly granted to the creditor.

Where, after being put in default, the party who has the choice of the prestation fails to exercise it within the time allotted to him to do so, the choice of the prestation passes to the other party.

1991, c. 64, s. 1546.

1547. A debtor may neither perform nor be compelled to perform part of one prestation

and part of the other.

1991, c. 64, s. 1547.

1548. Where the debtor has the option and one of the prestations becomes impossible to perform, even through his own fault, he shall perform the one that remains.

If, in the same case, both prestations become impossible to perform and the impossibility of performing either of them is due to the fault of the debtor, he is liable to the creditor to the extent of the value of the last prestation remaining.

1991, c. 64, s. 1548.

1549. Where the creditor has the option, he shall, if one of the prestations becomes impossible to perform, accept the remaining prestation unless the impossibility of performing it is due to the fault of the debtor, in which case the creditor has the right to exact specific performance of the remaining prestation or reparation, by equivalence, for the injury resulting from the nonperformance of the prestation that has become impossible.

If, in the same case, the prestations become impossible to perform and the impossibility of performing them is due to the fault of the debtor, the creditor may exact reparation, by equivalence, for the injury resulting from the nonperformance of one or another of the prestations.

1991, c. 64, s. 1549.

1550. Where all the prestations become impossible to perform through no fault of the debtor, the obligation is extinguished.

1991, c. 64, s. 1550.

1551. The obligation is an alternative obligation even where it has more than two principal prestations as its object, and the rules of this subdivision apply, adapted as required, to all such obligations.

1991, c. 64, s. 1551.

II — Facultative obligations

1552. A facultative obligation is an obligation which has only one principal prestation as its object but from which the debtor may release himself by performing another prestation.

The debtor is released if the principal prestation, through no fault on his part, becomes impossible to perform.

1991, c. 64, s. 1552.

CHAPTER VI

PERFORMANCE OF OBLIGATIONS

SECTION I

PAYMENT

§1. — Payment in general

1553. Payment means not only the turning over of a sum of money in satisfaction of an obligation, but also the actual performance of whatever forms the object of the obligation.

1991, c. 64, s. 1553.

1554. Every payment presupposes an obligation; what has been paid where there is no obligation may be recovered.

Recovery is not admitted, however, in the case of natural obligations that have been voluntarily paid.

1991, c. 64, s. 1554.

1555. Payment may be made by any person, even if he is a third person with respect to the obligation; the creditor may be put in default by the offer of a third person to perform the obligation in the name of the debtor, provided the offer is made for the benefit of the debtor and not merely to change creditors.

A creditor may not be compelled to take payment from a third person, however, if he has an interest in having the obligation performed by the debtor personally.

1991, c. 64, s. 1555.

1556. A valid payment may only be made by a person having a right in the thing due which entitles him to give it in payment.

However, payment of a sum of money or of any other thing due that is consumed by use may not be recovered against a creditor who has used it in good faith, even though it was made by a person who was not authorized to make it.

1991, c. 64, s. 1556.

1557. Payment shall be made to the creditor or to the person authorized to receive it for him.

Payment made to a third person is valid if the creditor ratifies it; if it is not ratified, the payment is valid only to the extent that it benefits the creditor.

1991, c. 64, s. 1557.

1558. Payment made to a creditor without capacity to receive it is valid only to the extent of the benefit he derives from it.

1991, c. 64, s. 1558.

1559. Payment made in good faith to the apparent creditor is valid, even though it is subsequently established that he is not the rightful creditor.

1991, c. 64, s. 1559.

1560. Payment made by a debtor to his creditor to the detriment of a seizing creditor is not valid against the seizing creditor who, according to his rights, may compel the debtor to pay again; in that case, the debtor has a remedy against the creditor so paid.

1991, c. 64, s. 1560.

1561. A creditor may not be compelled to accept anything other than what is due to him, even though the thing offered is of greater value.

Nor may he be compelled to accept partial payment of an obligation unless the obligation is disputed in part. In that case, if the debtor offers to pay the undisputed part, the creditor may not refuse to accept payment of it, but he preserves his right to claim the other part of the obligation.

1991, c. 64, s. 1561.

1562. A debtor of a certain and determinate thing is released by the handing over of the thing in its actual condition at the time of payment, provided that the deterioration it has suffered is not due to his act or fault and did not occur after he was in default.

1991, c. 64, s. 1562.

1563. Where the thing is determinate as to its kind only, the debtor need not give one of the best quality, but he may not offer one of the worst quality.

1991, c. 64, s. 1563.

1564. Where the debt consists of a sum of money, the debtor is released by paying the nominal amount due in money which is legal tender at the time of payment.

He is also released by remitting the amount due by money order, by cheque made to the order of the creditor and certified by a financial institution carrying on business in Québec, or by any other instrument of payment offering the same guarantees to the creditor, or, if the creditor is in a position to accept it, by means of a credit card or a transfer of funds to an account of the creditor in a financial institution.

1991, c. 64, s. 1564.

1565. Interest is paid at the agreed rate or, if none, at the legal rate.

1991, c. 64, s. 1565.

1566. Payment is made at the place expressly or impliedly indicated by the parties.

If no place is indicated by the parties, payment is made at the domicile of the debtor, unless what is due is a certain and determinate thing, in which case payment is made at the place where the property was when the obligation arose.

1991, c. 64, s. 1566.

1567. The expenses attending payment are borne by the debtor.

1991, c. 64, s. 1567.

1568. A debtor who pays his debt is entitled to an acquittance and to the turning over of the original title of the obligation.

1991, c. 64, s. 1568.

§2. — *Imputation of payment*

1569. When making payment, a debtor who owes several debts has the right to impute payment to the debt he intends to pay.

He may not, however, without the consent of the creditor, impute payment to a debt not yet due in preference to a debt which has become due, unless it was agreed that payment may be made by anticipation.

1991, c. 64, s. 1569.

1570. A debtor who owes a debt that bears interest or yields periodic payments may not, without the consent of the creditor, impute a payment to the capital in preference to the interest or periodic payments.

Any partial payment made on the principal and interest is imputed first to the interest.

1991, c. 64, s. 1570.

1571. Where a debtor who owes several debts has accepted an acquittance by which the creditor, at the time of payment, imputed payment to one specific debt, he may not subsequently require that it be imputed to a different debt, except upon grounds for which contracts may be annulled.

1991, c. 64, s. 1571.

1572. In the absence of imputation by the parties, payment is imputed first to the debt that

is due.

Where several debts are due, payment is imputed to the debt which the debtor has the greatest interest in paying.

Where the debtor has the same interest in paying several debts, payment is imputed to the debt that became due first; if all of the debts became due at the same time, however, payment is imputed proportionately.

1991, c. 64, s. 1572.

§3. — *Tender and deposit*

1573. Where a creditor refuses or neglects to accept payment, the debtor may make a tender.

A tender consists in placing the thing which is due at the disposal of the creditor at the place and time that payment is due. In addition to the thing due, with the interest and periodic payments it has yielded, a reasonable amount to cover unliquidated expenses owed by the debtor shall be included, saving the right to make up any deficiency in that amount.

1991, c. 64, s. 1573.

1574. Where the object tendered is a sum of money, it may be tendered in currency which is legal tender at the time of payment or by cheque made to the order of the creditor and certified by a financial institution carrying on business in Québec.

Tender may also be made by way of an irrevocable and unconditional undertaking, for an indefinite term, by a financial institution carrying on business in Québec, to pay to the creditor the amount tendered if the creditor accepts the tender or if the court declares it valid.

1991, c. 64, s. 1574.

1575. Tender may be made by notarial act *en minute* or by a judicial declaration which is recorded; it may also be made by any other writing or in any other manner, provided it is legally proved.

Where tender is made by notarial act, the notary records the answer of the creditor in the act and, in case of refusal, the reasons given by him.

1991, c. 64, s. 1575; 1992, c. 57, s. 716.

1576. The tender of a sum of money or securities made by a judicial declaration which is recorded shall be completed by deposit of the sum or the securities, according to the rules of the Code of Civil Procedure.

1991, c. 64, s. 1576.

1577. Where payment or delivery of the thing is to be made at the domicile of the debtor or at the place where the thing is located, a written notice given to the creditor by the debtor that he is ready to perform the obligation there has the same effect as a tender.

Where payment or delivery of the thing need not be so made and it is difficult to transport the thing to the place where it is to be made, the debtor may, in writing, require the creditor to advise him of his willingness to accept the thing, if he has reason to believe that the creditor will refuse it; if the creditor fails to advise the debtor of his willingness in due time, the debtor need not transport the thing to the place where it is to be paid or delivered and his notice to the creditor has the same effect as a tender.

1991, c. 64, s. 1577; 2002, c. 19, s. 15.

1578. Where the thing which is due is a sum of money or securities, a written notice given by the debtor to the creditor that the sum of money or the securities are deposited has the same effect as a tender.

1991, c. 64, s. 1578.

1579. In every tender, or notice having the same effect, the nature of the debt, the title under which it was created and the name of the creditor or the persons to whom payment is to be made shall be indicated; in addition, a description of the thing tendered shall be included with, in the case of a sum of money in cash, an enumeration of each denomination.

1991, c. 64, s. 1579.

1580. A creditor is in default by operation of law where, without justification, he refuses a valid tender or refuses to act on the notice having the same effect, or where he clearly expresses his intention to refuse any tender that the debtor might wish to make; in this last case, the debtor need not make any tender or give any notice having the same effect.

A creditor is also in default by operation of law where the debtor, despite his diligence, cannot find him.

1991, c. 64, s. 1580.

1581. Where the creditor is in default, the debtor may take any measures necessary or useful for the preservation of the thing which he owes and, in particular, entrust it to a third person for storage or custody.

In the same case, if the thing is highly perishable, subject to rapid depreciation or expensive to preserve, the debtor may sell it and deposit the proceeds.

1991, c. 64, s. 1581.

1582. A creditor who is in default bears the reasonable costs of preservation of the thing, as well as any costs that may be incurred for the sale of the thing and the deposit of the proceeds.

He also bears the risks of loss of the thing by superior force.

1991, c. 64, s. 1582.

1583. Deposit by the debtor of the sum of money or the securities which he owes is made in the general deposit office or any trust company or, during judicial proceedings, according to the rules of the Code of Civil Procedure.

Deposit may be made not only where the creditor refuses to accept the money or securities owed by the debtor, but also, among other cases, where the claim is in dispute between several persons or where the debtor is prevented from making payment by reason of the fact that the creditor cannot be found at the place where the payment is to be made.

1991, c. 64, s. 1583.

1584. A debtor may withdraw a sum of money or securities which he has deposited, so long as they have not been accepted by the creditor; if he withdraws them, neither his co-debtors nor his sureties are released.

No withdrawal may be made during judicial proceedings, however, except by authorization of the court.

1991, c. 64, s. 1584.

1585. Where the deposit of a sum of money or of securities is declared valid by the court, the debtor may not withdraw them except with the consent of the creditor.

The withdrawal may not be made, however, if it would impair the rights of third persons or prevent the release of the co-debtors or the sureties of the debtor.

1991, c. 64, s. 1585.

1586. A deposit made according to the conditions set forth in the preceding articles releases the debtor, for the future, from the payment of interest or income yielded.

1991, c. 64, s. 1586.

1587. Interest or income yielded from the date of deposit belongs to the creditor. Nevertheless, where the deposit is made to obtain the performance of an obligation of the creditor that is correlative to the obligation the debtor intends to perform by the deposit, the interest or income belongs to the debtor until the deposit is accepted by the creditor.

1991, c. 64, s. 1587.

1588. A tender accepted by the creditor or declared valid by the court is equivalent, in respect of the debtor, to payment made on the day of the tender or of the notice having the same effect, provided the debtor has always been willing to pay from that time.

1991, c. 64, s. 1588.

1589. Where tender and deposit are accepted or declared valid by the court, the expenses related to them are borne by the creditor.

1991, c. 64, s. 1589.

SECTION II

RIGHT TO ENFORCE PERFORMANCE

§1. — *General provision*

1590. An obligation confers on the creditor the right to demand that the obligation be performed in full, properly and without delay.

Where the debtor fails to perform his obligation without justification on his part and he is in default, the creditor may, without prejudice to his right to the performance of the obligation in whole or in part by equivalence,

- (1) force specific performance of the obligation;
- (2) obtain, in the case of a contractual obligation, the resolution or resiliation of the contract or the reduction of his own correlative obligation;
- (3) take any other measure provided by law to enforce his right to the performance of the obligation.

1991, c. 64, s. 1590.

§2. — *Exception for nonperformance and right of retention*

1591. Where the obligations arising from a synallagmatic contract are exigible and one of the parties fails to perform his obligation to a substantial degree or does not offer to perform it, the other party may refuse to perform his correlative obligation to a corresponding degree, unless he is bound by law, the will of the parties or usage to perform first.

1991, c. 64, s. 1591.

1592. A party who, with the consent of the other party, has detention of property belonging to the latter has a right to retain it pending full payment of his claim against him, if the claim is exigible and is directly related to the property of which he has detention.

1991, c. 64, s. 1592.

1593. The right of retention may be set up against anyone.

Involuntary dispossession does not extinguish a right of retention; the party exercising the right may revendicate the property, subject to the rules on prescription.

1991, c. 64, s. 1593.

§3. — *Default*

1594. A debtor may be in default by the terms of the contract itself, when it contains a stipulation that the mere lapse of time for performing it will have that effect.

A debtor may also be put in default by an extrajudicial demand addressed to him by his creditor to perform the obligation, a judicial demand filed against him or the sole operation of law.

1991, c. 64, s. 1594.

1595. The extrajudicial demand by which a creditor puts his debtor in default shall be made in writing.

If the demand does not allow the debtor sufficient time for performance, having regard to the nature of the obligation and the circumstances, the debtor may perform the obligation within a reasonable time after the demand.

1991, c. 64, s. 1595.

1596. Where a creditor files a judicial demand against the debtor without his otherwise being in default, the debtor is entitled to perform the obligation within a reasonable time after the demand. If the obligation is performed within a reasonable time, the costs of the demand are borne by the creditor.

1991, c. 64, s. 1596.

1597. A debtor is in default by the sole operation of law where the performance of the obligation would have been useful only within a certain time which he allowed to expire or where he failed to perform the obligation immediately despite the urgency that he do so.

A debtor is also in default by operation of law where he has violated an obligation not to do, or where specific performance of the obligation has become impossible through his fault, and also where he has made clear to the creditor his intention not to perform the obligation or where, in the case of an obligation of successive performance, he has repeatedly refused or neglected to perform it.

1991, c. 64, s. 1597.

1598. The creditor shall prove the occurrence of one of the cases of default by operation of law notwithstanding any statement or stipulation to the contrary.

1991, c. 64, s. 1598.

1599. An extrajudicial demand by which the creditor puts one of the solidary debtors in default has effect with respect to the other debtors.

Similarly, an extrajudicial demand made by one of the solidary creditors has effect with respect to the other creditors.

1991, c. 64, s. 1599.

1600. Where the object of the performance is a sum of money, the debtor, although he may be granted a period of grace, is liable for injury resulting from delay in the performance of the obligation from the moment he begins to be in default.

The debtor in such a case is also liable from the same moment for any loss resulting from superior force, unless he is released thereby from his obligation.

1991, c. 64, s. 1600.

§4. — *Specific performance*

1601. A creditor may, in cases which admit of it, demand that the debtor be forced to make specific performance of the obligation.

1991, c. 64, s. 1601.

1602. In case of default, the creditor may perform the obligation or cause it to be performed at the expense of the debtor.

A creditor wishing to avail himself of this right shall so notify the debtor in the judicial or extrajudicial demand by which he puts him in default, except in cases where the debtor is in default by operation of law or by the terms of the contract itself.

1991, c. 64, s. 1602.

1603. The creditor may be authorized to destroy or remove, at the expense of the debtor, what has been made by the debtor in violation of an obligation not to do.

1991, c. 64, s. 1603.

§5. — *Resolution or resiliation of contracts and reduction of obligations*

1604. Where the creditor does not avail himself of the right to force the specific performance of the contractual obligation of the debtor in cases which admit of it, he is entitled either to the resolution of the contract, or to its resiliation in the case of a contract of successive performance.

However and notwithstanding any stipulation to the contrary, he is not entitled to resolution or resiliation of the contract if the default of the debtor is of minor importance, unless, in the case of an obligation of successive performance, the default occurs repeatedly, but he is then entitled to a proportional reduction of his correlative obligation.

All the relevant circumstances are taken into consideration in assessing the proportional

reduction of the correlative obligation. If the obligation cannot be reduced, the creditor is entitled to damages only.

1991, c. 64, s. 1604.

1605. A contract may be resolved or resiliated without judicial proceedings where the debtor is in default by operation of law or where he has failed to perform his obligation within the time allowed in the writing putting him in default.

1991, c. 64, s. 1605.

1606. A contract which is resolved is deemed never to have existed; each party is, in such a case, bound to restore to the other the prestations he has already received.

A contract which is resiliated ceases to exist, but only for the future.

1991, c. 64, s. 1606.

§6. — Performance by equivalence

I — General provisions

1607. The creditor is entitled to damages for bodily, moral or material injury which is an immediate and direct consequence of the debtor's default.

1991, c. 64, s. 1607.

1608. The obligation of the debtor to pay damages to the creditor is neither reduced nor altered by the fact that the creditor receives a prestation from a third person, as a result of the injury he has sustained, except so far as the third person is subrogated to the rights of the creditor.

1991, c. 64, s. 1608.

1609. An acquittance, transaction or statement obtained from the creditor in connection with bodily or moral injury he has sustained, obtained by the debtor, an insurer or their representatives within thirty days of the act which caused the injury, is without effect if it is damaging to the creditor.

1991, c. 64, s. 1609.

1610. The right of a creditor to damages, including punitive damages, may be assigned or transmitted.

This rule does not apply where the right of the creditor results from a breach of a personality right; in such a case, the right of the creditor to damages may not be assigned, and may be transmitted only to his heirs.

1991, c. 64, s. 1610.

II — Assessment of damages

1. Assessment in general

1611. The damages due to the creditor compensate for the amount of the loss he has sustained and the profit of which he has been deprived.

Future injury which is certain and able to be assessed is taken into account in awarding damages.

1991, c. 64, s. 1611.

1612. The loss sustained by the owner of a trade secret includes the investment expenses incurred for its acquisition, perfection and use; the profit of which he is deprived may be compensated for through payment of royalties.

1991, c. 64, s. 1612; 2002, c. 19, s. 15.

1613. In contractual matters, the debtor is liable only for damages that were foreseen or foreseeable at the time the obligation was contracted, where the failure to perform the obligation does not proceed from intentional or gross fault on his part; even then, the damages include only what is an immediate and direct consequence of the nonperformance.

1991, c. 64, s. 1613.

1614. Damages owed to the creditor for bodily injury he sustains are measured as to the future aspects of the injury according to the discount rates set by regulation of the Government, from the time such rates are set.

1991, c. 64, s. 1614.

1615. The court, in awarding damages for bodily injury, may, for a period of not over three years, reserve the right of the creditor to apply for additional damages, if the course of his physical condition cannot be determined with sufficient precision at the time of the judgment.

1991, c. 64, s. 1615.

1616. Damages awarded for injury are exigible in the form of capital payable in cash, unless otherwise agreed by the parties.

Where the injury sustained is bodily injury and where the creditor is a minor, however, the court may order payment, in whole or in part, in the form of an annuity or by periodic instalments, on the terms and conditions it fixes and indexed according to a fixed rate. Within three months of the date on which the minor becomes of full age, the creditor may demand immediate and discounted payment of any amount still receivable.

1991, c. 64, s. 1616.

1617. Damages which result from delay in the performance of an obligation to pay a sum of money consist of interest at the agreed rate or, in the absence of any agreement, at the legal rate.

The creditor is entitled to the damages from the date of default without having to prove that he has sustained any injury.

A creditor may stipulate, however, that he will be entitled to additional damages, provided he justifies them.

1991, c. 64, s. 1617.

1618. Damages other than those resulting from delay in the performance of an obligation to pay a sum of money bear interest at the rate agreed by the parties, or, in the absence of agreement, at the legal rate, from the date of default or from any other later date which the court considers appropriate, having regard to the nature of the injury and the circumstances.

1991, c. 64, s. 1618.

1619. An indemnity may be added to the amount of damages awarded for any reason, which is fixed by applying to the amount of the damages, from either of the dates used in computing the interest on them, a percentage equal to the excess of the rate of interest fixed for claims of the State under section 28 of the Act respecting the Ministère du Revenu over the rate of interest agreed by the parties or, in the absence of agreement, over the legal rate.

1991, c. 64, s. 1619.

1620. Interest accrued on principal does not itself bear interest except where that is provided by agreement or by law or where additional interest is expressly demanded in a suit.

1991, c. 64, s. 1620.

1621. Where the awarding of punitive damages is provided for by law, the amount of such damages may not exceed what is sufficient to fulfil their preventive purpose.

Punitive damages are assessed in the light of all the appropriate circumstances, in particular the gravity of the debtor's fault, his patrimonial situation, the extent of the reparation for which he is already liable to the creditor and, where such is the case, the fact that the payment of the damages is wholly or partly assumed by a third person.

1991, c. 64, s. 1621.

2. Anticipated assessment of damages

1622. A penal clause is one by which the parties assess the anticipated damages by stipulating that the debtor will suffer a penalty if he fails to perform his obligation.

A creditor has the right to avail himself of a penal clause instead of enforcing, in cases which admit of it, the specific performance of the obligation; but in no case may he exact both the performance and the penalty, unless the penalty has been stipulated for mere delay in the performance of the obligation.

1991, c. 64, s. 1622.

1623. A creditor who avails himself of a penal clause is entitled to the amount of the stipulated penalty without having to prove the injury he has suffered.

However, the amount of the stipulated penalty may be reduced if the creditor has benefited from partial performance of the obligation or if the clause is abusive.

1991, c. 64, s. 1623.

1624. Where an obligation with a penal clause is indivisible without being solidary and its nonperformance is due to the act or omission of only one of the co-debtors, the penalty may be exacted in full against him or against each of the co-debtors for his share, but, in the latter case, without prejudice to their remedy against the co-debtor who caused the penalty to be incurred.

1991, c. 64, s. 1624; 2002, c. 19, s. 15.

1625. Where an obligation with a penal clause is divisible, the penalty also is divisible and is incurred only by that debtor who fails to perform the obligation, and only for that part for which he is liable, without there being any action against those who have performed it.

This rule does not apply where the obligation is solidary, nor where the penal clause was stipulated to prevent partial payment and one of the co-debtors has prevented the performance of the obligation for the whole; in this case, that co-debtor is liable for the whole penalty and the others are liable for their respective shares only, without prejudice to their remedy against him.

1991, c. 64, s. 1625.

SECTION III

PROTECTION OF THE RIGHT TO PERFORMANCE OF OBLIGATIONS

§1. — *Conservatory measures*

1626. A creditor may take all necessary or useful measures to preserve his rights.

1991, c. 64, s. 1626.

§2. — *Oblique action*

1627. A creditor whose claim is certain, liquid and exigible may exercise the rights and

actions belonging to the debtor, in the debtor's name, where the debtor refuses or neglects to exercise them to the prejudice of the creditor.

However, he may not exercise rights and actions which are strictly personal to the debtor.

1991, c. 64, s. 1627.

1628. It is not necessary for the claim to be liquid and exigible at the time the action is instituted, but it is necessary that it be so at the time judgment is rendered.

1991, c. 64, s. 1628.

1629. The person against whom an oblique action is brought may set up against the creditor all the defenses he could have set up against his own creditor.

1991, c. 64, s. 1629.

1630. Property recovered by a creditor in the name of the debtor falls into the patrimony of the debtor and benefits all his creditors.

1991, c. 64, s. 1630.

§3. — *Paulian action*

1631. A creditor who suffers prejudice through a juridical act made by his debtor in fraud of his rights, in particular an act by which he renders or seeks to render himself insolvent, or by which, being insolvent, he grants preference to another creditor may obtain a declaration that the act may not be set up against him.

1991, c. 64, s. 1631.

1632. An onerous contract or a payment made for the performance of such a contract is deemed to be made with fraudulent intent if the contracting party or the creditor knew the debtor to be insolvent or knew that the debtor, by the juridical act, was rendering himself or was seeking to render himself insolvent.

1991, c. 64, s. 1632.

1633. A gratuitous contract or a payment made for the performance of such a contract is deemed to be made with fraudulent intent, even if the contracting party or the creditor was unaware of the facts, where the debtor is or becomes insolvent at the time the contract is formed or the payment is made.

1991, c. 64, s. 1633.

1634. The creditor may bring a claim only if it is certain at the time the action is instituted, and if it is liquid and exigible at the time the judgment is rendered.

He may bring the claim only if it existed prior to the juridical act which is attacked, unless

that act was made for the purpose of defrauding a later ranking creditor.

1991, c. 64, s. 1634.

1635. The action is forfeited unless it is brought within one year from the day on which the creditor learned of the injury resulting from the act which is attacked, or, where the action is brought by a trustee in bankruptcy on behalf of all the creditors, from the date of appointment of the trustee.

1991, c. 64, s. 1635.

1636. Where it is declared that a juridical act may not be set up against the creditor, it may not be set up against any other creditors who were entitled to institute the action and who intervened in it to protect their rights; all may have the property forming the object of the contract or payment seized and sold and be paid according to their claims, subject to the rights of prior or hypothecary creditors.

1991, c. 64, s. 1636.

CHAPTER VII

TRANSFER AND ALTERATION OF OBLIGATIONS

SECTION I

ASSIGNMENT OF CLAIMS

§1. — Assignment of claims in general

1637. A creditor may assign to a third person all or part of a claim or a right of action which he has against his debtor.

He may not, however, make an assignment that is injurious to the rights of the debtor or that renders his obligation more onerous.

1991, c. 64, s. 1637.

1638. The assignment of a claim includes its accessories.

1991, c. 64, s. 1638.

1639. Where the assignment is by onerous title, the assignor guarantees that the claim exists and is owed to him, even if the assignment is made without warranty, unless the assignee has acquired it at his own risk or knew of the uncertain nature of the claim at the time of the assignment.

1991, c. 64, s. 1639.

1640. Where the assignor by onerous title guarantees the solvency of the debtor by a

simple clause of warranty, he is liable for the solvency only at the time of the assignment and to the extent of the price he received.

1991, c. 64, s. 1640.

1641. An assignment may be set up against the debtor and the third person as soon as the debtor has acquiesced in it or received a copy or a pertinent extract of the deed of assignment or any other evidence of the assignment which may be set up against the assignor.

Where the debtor cannot be found in Québec, the assignment may be set up upon publication of a notice of assignment in a newspaper distributed in the locality of the last known address of the debtor or, if he carries on an enterprise, in the locality where its principal establishment is situated.

1991, c. 64, s. 1641; 1992, c. 57, s. 716.

1642. The assignment of a universality of claims, present or future, may be set up against debtors and third persons by the registration of the assignment in the register of personal and movable real rights, provided, however, that the other formalities whereby the assignment may be set up against the debtors who have not acquiesced in it have been accomplished.

1991, c. 64, s. 1642.

1643. A debtor may set up against the assignee any payment made to the assignor before the assignment could be set up against him, as well as any other cause of extinction of the obligation that occurred before that time.

A debtor may also set up any payment made in good faith by himself or his surety to an apparent creditor, even if the required formalities whereby the assignment may be set up against the debtor and third persons have been accomplished.

1991, c. 64, s. 1643.

1644. Where a copy or an extract of the deed of assignment or any other evidence of the assignment which may be set up against an assignor is handed over to the debtor at the time of service of an action brought against the debtor, no legal costs may be exacted from the debtor if he pays within the time fixed for appearance, unless he is already in default.

1991, c. 64, s. 1644; 1992, c. 57, s. 716.

1645. The assignment may not be set up against the surety unless the prescribed formalities for the setting up of assignment against the debtor have been accomplished in respect of the surety himself.

1991, c. 64, s. 1645.

1646. The assignees of the same claim, and the assignor in respect of any remainder due to him, are paid in proportion to the value of their claims.

However, persons having obtained an assignment with a guarantee of payment are paid in preference to all other assignees and to the assignor, and, among themselves, in the order of the dates on which their respective assignments could be set up against the debtor.

1991, c. 64, s. 1646.

§2. — *Assignment of claims attested by bearer instrument*

1647. It is of the essence of a claim attested by a bearer instrument issued by a debtor that it may be assigned by mere delivery, to another bearer, of the instrument attesting it.

1991, c. 64, s. 1647.

1648. A debtor who has issued a bearer instrument is bound to pay the debt attested thereby to any bearer who hands over the instrument to him, except where he has received notice of a judgment ordering him to withhold payment thereof.

He may not set up any defenses against the bearer other than defenses respecting the nullity or a defect of title, those founded on an express stipulation in the instrument or such defenses as he may raise against the bearer personally.

1991, c. 64, s. 1648.

1649. A debtor who has issued a bearer instrument remains bound towards every bearer in good faith, even if the debtor shows that the instrument was negotiated against his will.

1991, c. 64, s. 1649.

1650. A person who has been unlawfully dispossessed of a bearer instrument may not prevent the debtor from paying the claim to the person who presents the instrument except on notification of an order of the court.

1991, c. 64, s. 1650.

SECTION II

SUBROGATION

1651. A person who pays in the place of a debtor may be subrogated to the rights of the creditor.

He does not have more rights than the subrogating creditor.

1991, c. 64, s. 1651.

1652. Subrogation may be conventional or legal.

1991, c. 64, s. 1652.

1653. Conventional subrogation may be made by the creditor or the debtor, but it shall be made expressly and in writing.

1991, c. 64, s. 1653.

1654. Subrogation may be made by the creditor only at the same time as he receives payment. It takes effect without the consent of the debtor, notwithstanding any stipulation to the contrary.

1991, c. 64, s. 1654.

1655. Subrogation may not be made by a debtor in favour of anyone except his lender and it takes effect without the consent of the creditor.

In order for subrogation to be valid in this case, the loan instrument and the acquittance shall each be made in the form of a notarial act *en minute* or by a private writing drawn up before two witnesses who sign it. In addition, a statement shall be made in the loan instrument that the loan is granted for the purpose of paying the debt, and, in the acquittance, that the debt is paid out of the loan.

1991, c. 64, s. 1655.

1656. Subrogation takes place by operation of law

- (1) in favour of a creditor who pays another creditor whose claim is preferred to his because of a prior claim or a hypothec;
- (2) in favour of the acquirer of a property who pays a creditor whose claim is secured by a hypothec on the property;
- (3) in favour of a person who pays a debt to which he is bound with others or for others and which he has an interest in paying;
- (4) in favour of an heir who pays with his own funds a debt of the succession for which he was not bound;
- (5) in any other case provided by law.

1991, c. 64, s. 1656.

1657. Subrogation has effect against the principal debtor and his warrantors, who may set up against the person subrogated the defenses they had against the original creditor.

1991, c. 64, s. 1657.

1658. A creditor who has been only partly paid may exercise his rights in respect of the balance of his claim in preference to the person subrogated from whom he has received only part of his claim.

However, if the creditor has obligated himself to the person subrogated to guarantee payment of the amount for which the subrogation is acquired, the person subrogated has the preference.

1991, c. 64, s. 1658.

1659. Except where there is agreement to the contrary, persons who are subrogated to the rights of the same creditor are paid in proportion to the value of their share in the payment in subrogation.

1991, c. 64, s. 1659.

SECTION III

NOVATION

1660. Novation is effected where the debtor contracts towards his creditor a new debt which is substituted for the existing debt, which is extinguished, or where a new debtor is substituted for the former debtor, who is discharged by the creditor; in such a case, novation may be effected without the consent of the former debtor.

Novation is also effected where, by the effect of a new contract, a new creditor is substituted for the former creditor, towards whom the debtor is discharged.

1991, c. 64, s. 1660.

1661. Novation is not presumed; it is effected only where the intention to effect it is evident.

1991, c. 64, s. 1661.

1662. Hypothecs attached to the existing claim are not transferred to the claim substituted for it, unless they are expressly reserved by the creditor.

1991, c. 64, s. 1662.

1663. Where novation is effected by substitution of a new debtor, the new debtor may not set up against the creditor the defenses which he could have raised against the former debtor, nor the defenses which the former debtor had against the creditor, unless, in the latter case, he may invoke the nullity of the act that bound them.

Furthermore, hypothecs attached to the existing claim may not be transferred to the property of the new debtor; nor may they be reserved upon the property of the former debtor without his consent. However, they may be transferred to property acquired from the former debtor by the new debtor, if the new debtor consents thereto.

1991, c. 64, s. 1663.

1664. Where novation is effected between the creditor and one of the solidary debtors, hypothecs attached to the existing claim may only be reserved upon the property of the co-debtor who contracts the new debt.

1991, c. 64, s. 1664.

1665. Novation effected between the creditor and one of the solidary debtors releases the other co-debtors in respect of the creditor; novation effected in respect of the principal debtor releases his sureties.

However, where the creditor has required the accession of the co-debtors, in the first case, or of the sureties, in the second case, the existing claim subsists if the co-debtors or the sureties refuse to accede to the new contract.

1991, c. 64, s. 1665.

1666. Novation which has been agreed to by one of the solidary creditors may not be set up against the other co-creditors, except for his part in the solidary claim.

1991, c. 64, s. 1666.

SECTION IV

DELEGATION

1667. Designation by a debtor of a person who is to pay in his place constitutes a delegation of payment only when the delegate obligates himself personally to the delegatee to make the payment; otherwise, it merely constitutes an indication of payment.

1991, c. 64, s. 1667.

1668. Where the delegatee accepts the delegation, he preserves his rights against the delegator, unless the delegatee evidently intends to discharge him.

1991, c. 64, s. 1668.

1669. The delegate may not set up against the delegatee the defenses he could have raised against the delegator, even though he did not know of their existence at the time of the delegation.

This rule does not apply if, at the time of the delegation, nothing is due to the delegatee, nor does it prejudice the remedy of the delegate against the delegator.

1991, c. 64, s. 1669.

1670. The delegate may set up against the delegatee all such defenses as the delegator could have set up against the delegatee.

The delegate may not set up compensation, however, for what the delegator owes to the delegatee or for what the delegatee owes to the delegator.

1991, c. 64, s. 1670.

CHAPTER VIII

EXTINCTION OF OBLIGATIONS

SECTION I

GENERAL PROVISION

1671. Obligations are extinguished not only by the causes of extinction contemplated in other provisions of this Code, such as payment, the expiry of an extinctive term, novation or prescription, but also by compensation, confusion, release, impossibility of performance or discharge of the debtor.

1991, c. 64, s. 1671.

SECTION II

COMPENSATION

1672. Where two persons are reciprocally debtor and creditor of each other, the debts for which they are liable are extinguished by compensation, up to the amount of the lesser debt.

Compensation may not be claimed from the State, but the State may claim it.

1991, c. 64, s. 1672.

1673. Compensation is effected by operation of law upon the coexistence of debts that are certain, liquid and exigible and the object of both of which is a sum of money or a certain quantity of fungible property identical in kind.

A person may apply for judicial liquidation of a debt in order to set it up for compensation.

1991, c. 64, s. 1673.

1674. Compensation is effected even though the debts are not payable at the same place, provided allowance is made for the expenses of delivery, if any.

1991, c. 64, s. 1674.

1675. A period of grace granted for payment of one of the debts does not prevent compensation.

1991, c. 64, s. 1675.

1676. Compensation is effected regardless of the cause of the obligation that has given rise to the debt.

Compensation does not take place, however, if the claim results from an act performed with intention to harm or if the object of the debt is property which is exempt from seizure.

1991, c. 64, s. 1676.

1677. Where several debts subject to compensation are owed by one debtor, the rules of imputation of payment apply.

1991, c. 64, s. 1677.

1678. One of the solidary debtors may not set up compensation for what the creditor owes to his co-debtor, except for the share of that co-debtor in the solidary debt.

A debtor, whether solidary or not, may not set up compensation against one of the solidary creditors for what a co-creditor owes him, except for the share of that co-creditor in the solidary debt.

1991, c. 64, s. 1678.

1679. A surety may set up compensation for what the creditor owes to the principal debtor, but the principal debtor may not set up compensation for what the creditor owes to the surety.

1991, c. 64, s. 1679.

1680. A debtor who has acquiesced unconditionally in the assignment or hypothecating of claims by his creditor to a third person may not afterwards set up against the third person any compensation that he could have set up against the original creditor before he acquiesced.

An assignment or hypothec in which a debtor has not acquiesced, but which from a certain time may be set up against him, prevents compensation only for debts of the original creditor which come after that time.

1991, c. 64, s. 1680.

1681. Compensation may neither be effected nor be renounced to the prejudice of the acquired rights of a third person.

1991, c. 64, s. 1681.

1682. A debtor who could have set up compensation and has nevertheless paid his debt may not afterwards avail himself, to the prejudice of third persons, of any priority or hypothec attached to his claim.

1991, c. 64, s. 1682; 2002, c. 19, s. 15.

SECTION III

CONFUSION

1683. Where the qualities of creditor and debtor are united in the same person, confusion is effected, extinguishing the obligation. Nevertheless, in certain cases where confusion ceases to exist, the effects cease also.

1991, c. 64, s. 1683.

1684. Confusion of the qualities of creditor and debtor in the same person avails the sureties. Confusion of the qualities of surety and creditor or of surety and principal debtor does not extinguish the primary obligation.

1991, c. 64, s. 1684.

1685. Confusion of the qualities of creditor and solidary co-debtor or of debtor and solidary co-creditor extinguishes the obligation only to the extent of the share of that co-debtor or co-creditor.

1991, c. 64, s. 1685.

1686. A hypothec is extinguished by confusion of the qualities of hypothecary creditor and owner of the hypothecated property.

However, if the creditor is evicted for a cause which is not attributable to him, the hypothec revives.

1991, c. 64, s. 1686.

SECTION IV

RELEASE

1687. Release takes place where the creditor releases his debtor from his obligation.

Release is complete, unless it is stipulated to be partial.

1991, c. 64, s. 1687.

1688. Release is either express or tacit.

Release is either onerous or gratuitous, according to the nature of the act from which it derives.

1991, c. 64, s. 1688.

1689. A creditor who voluntarily surrenders the original title of an obligation to his debtor is presumed to grant him a release of the debt, unless the circumstances indicate that the debtor has paid the debt.

Similarly, a creditor who voluntarily surrenders the original title of an obligation to one of the solidary debtors is presumed to grant a release of the debt in favour of all the debtors.

1991, c. 64, s. 1689.

1690. Express release granted to one of the solidary debtors releases the other co-debtors for only the share of the person discharged; if one or several of the other co-debtors become insolvent, the shares of the insolvents are apportioned rateably between all the other co-debtors, except the co-debtor to whom the release was granted, whose share is borne by the creditor.

Express release granted by one of the solidary creditors releases the debtor only to the extent of the share of that creditor.

1991, c. 64, s. 1690.

1691. Express renunciation of a priority or a hypothec by a creditor does not give rise to a presumption of release of the secured debt.

1991, c. 64, s. 1691.

1692. Express release granted to one of the sureties releases the other sureties to the extent of the remedy they would have had against the released surety.

Nevertheless, no payment received by the creditor from the surety for his release may be imputed to the discharge of the principal debtor or of the other sureties, except, as regards the sureties, where they have a remedy against the released surety and to the extent of that remedy.

1991, c. 64, s. 1692.

SECTION V

IMPOSSIBILITY OF PERFORMANCE

1693. A debtor is released where he cannot perform an obligation by reason of a superior force and before he is in default, or where, although he was in default, the creditor could not, in any case, benefit by the performance of the obligation by reason of that superior force, unless, in either case, the debtor has expressly assumed the risk of superior force.

The burden of proof of superior force is on the debtor.

1991, c. 64, s. 1693.

1694. A debtor released by impossibility of performance may not exact performance of the correlative obligation of the creditor; if the performance has already been rendered, restitution is owed.

Where the debtor has performed part of his obligation, the creditor remains bound to perform his own obligation to the extent of his enrichment.

1991, c. 64, s. 1694.

SECTION VI

DISCHARGE OF THE DEBTOR

1695. Where a prior or hypothecary creditor acquires the property on which he has a claim, as a result of a judicial sale, a sale by the creditor or a sale by judicial authority, the debtor is released from his debt to the creditor up to the market value of the property at the time of acquisition, less any claims ranking ahead of the acquirer's claim.

The debtor is also released where, within three years from the sale, the creditor who acquired the property receives, by resale of all or part of the property or by any other transaction in respect of it, value equal to or greater than the amount of his claim, including capital, interest and costs, the amount of the disbursements he has made on the property, with interest, and the amount of the other prior or hypothecary claims ranking ahead of his own.

1991, c. 64, s. 1695.

1696. The creditor is presumed to have acquired the property if it is sold to a person in collusion with or related to the creditor, especially a spouse, a relative by blood or a person connected by marriage or a civil union up to the second degree, a person living with the creditor, a partner or a legal person of which the creditor is a director or which he or she controls.

1991, c. 64, s. 1696; 1992, c. 57, s. 716; 2002, c. 6, s. 49.

1697. A debtor, on being released, is entitled to an acquittance from his creditor.

If the creditor refuses to grant the acquittance, the debtor may move that the court declare his release. The judgment attesting the release is equivalent to an acquittance with respect to the creditor.

1991, c. 64, s. 1697.

1698. Release of the principal debtor entails release of his sureties and other warrantors, who may exercise the same rights as the principal debtor, even independently of him.

1991, c. 64, s. 1698.

CHAPTER IX

RESTITUTION OF PRESTATIONS

SECTION I

CIRCUMSTANCES IN WHICH RESTITUTION TAKES PLACE

1699. Restitution of prestations takes place where a person is bound by law to return to another person the property he has received, either unlawfully or by error, or under a juridical act which is subsequently annulled retroactively or under which the obligations become impossible to perform by reason of superior force.

The court may, exceptionally, refuse restitution where it would have the effect of according an undue advantage to one party, whether the debtor or the creditor, unless it deems it sufficient, in that case, to modify the scope or mode of the restitution instead.

1991, c. 64, s. 1699.

SECTION II

MODE OF RESTITUTION

1700. Restitution of prestations is made in kind, but, if this is impossible or cannot be done without serious inconvenience, it may be made by equivalence.

Equivalence is estimated at the time when the debtor received what he is liable to restore.

1991, c. 64, s. 1700.

1701. In the case of total loss or alienation of property subject to restitution, the person liable to make the restitution is bound to return the value of the property, considered when it was received, or at the time of its loss or alienation, or at the time of its restitution, whichever value is the lowest, or, if the person is in bad faith or if the restitution is due to his fault, whichever value is the highest.

If the property has perished by superior force, however, the debtor is exempt from making restitution, but he shall then assign to the creditor, as the case may be, the indemnity he has received for the loss of the property or, if he has not already received it, the right to the indemnity. If the debtor is in bad faith or if the restitution is due to his fault, he is not exempt from making restitution unless the property would also have perished if it had been in the hands of the creditor.

1991, c. 64, s. 1701.

1702. Where the property he returns has suffered partial loss, for example a deterioration or any other depreciation in value, the person who is liable to make restitution is bound to indemnify the creditor for such loss, unless it results from normal use of the property.

1991, c. 64, s. 1702.

1703. The right to reimbursement for expenses incurred in respect of property subject to restitution is governed by the provisions of the Book on Property, applicable to a possessor in good faith or, in case of bad faith or if the restitution is due to the fault of the person who is bound to make restitution, by those applicable to possessors in bad faith.

1991, c. 64, s. 1703.

1704. The fruits and revenues of the property being restored belong to the person who is bound to make restitution, and he bears the costs he has incurred to produce them. He owes no indemnity for enjoyment of the property unless that was the primary object of the prestation or unless the property was subject to rapid depreciation.

If the person who is bound to make restitution is in bad faith or if the restitution is due to his fault, he is bound, after compensating for the costs, to return the fruits and revenues and indemnify the creditor for any enjoyment he has derived from the property.

1991, c. 64, s. 1704.

1705. Costs of restitution are borne by the parties, in proportion, where applicable, to the value of the prestations mutually restored.

Where one party is in bad faith, however, or where the restitution is due to his fault, the costs are borne by that party alone.

1991, c. 64, s. 1705.

1706. Protected persons are bound to make restitution of prestations to the extent of the enrichment they derive from them; proof of such enrichment is borne by the person claiming restitution.

A protected person may, however, be bound to make full restitution where restitution has become impossible through his intentional or gross fault.

1991, c. 64, s. 1706.

SECTION III

EFFECTS OF RESTITUTION ON THIRD PERSONS

1707. Acts of alienation by onerous title performed by a person who is bound to make restitution, if made in favour of a third person in good faith, may be set up against the person to whom restitution is owed. Acts of alienation by gratuitous title may not be set up, subject to the rules on prescription.

Any other acts performed in favour of a third person in good faith may be set up against the person to whom restitution is owed.

1991, c. 64, s. 1707.

TITLE TWO

NOMINATE CONTRACTS

CHAPTER I

SALE

SECTION I

SALE IN GENERAL

§1. — *General provisions*

1708. Sale is a contract by which a person, the seller, transfers ownership of property to another person, the buyer, for a price in money which the latter obligates himself to pay.

A dismemberment of the right of ownership, or any other right held by the person, may also be transferred by sale.

1991, c. 64, s. 1708.

1709. A person charged with the sale of property of another may not acquire such property, even through an intermediary; the same applies to a person charged with administration of property of another or with supervision of its administration, subject, for the administrator, to article 1312.

Furthermore, such a person may not sell his own property for a price paid out of the property or patrimony which he administers or of which he supervises the administration.

In no case may such a person apply for annulment of the sale.

1991, c. 64, s. 1709.

§2. — *Promise*

1710. The promise of sale with delivery and actual possession is equivalent to sale.

1991, c. 64, s. 1710.

1711. Any amount paid on the occasion of a promise of sale is presumed to be a deposit on the price unless otherwise stipulated in the contract.

1991, c. 64, s. 1711.

1712. Failure by the promisor, whether he be the seller or the buyer, to execute the deed

entitles the beneficiary of the promise to obtain a judgment in lieu thereof.

1991, c. 64, s. 1712.

§3. — *Sale of property of another*

1713. The sale of property by a person other than the owner or than a person charged with its sale or authorized to sell it may be declared null.

The sale may not be declared null, however, if the seller becomes the owner of the property.

1991, c. 64, s. 1713.

1714. The true owner may apply for the annulment of the sale and revendicate the sold property from the buyer unless the sale was made under judicial authority or unless the buyer can set up positive prescription.

If the property is a movable sold in the ordinary course of business of an enterprise, the owner is bound to reimburse the buyer in good faith for the price he has paid.

1991, c. 64, s. 1714.

1715. The buyer as well may apply for the annulment of the sale.

He may not do so, however, where the owner himself is not entitled to revendicate the property.

1991, c. 64, s. 1715.

§4. — *Obligations of the seller*

1716. The seller is bound to deliver the property and to warrant the ownership and quality of the property.

These warranties exist of right whether or not they are stipulated in the contract of sale.

1991, c. 64, s. 1716.

I — Delivery

1717. The obligation to deliver the property is fulfilled when the seller puts the buyer in possession of the property or consents to his taking possession of it and all hindrances are removed.

1991, c. 64, s. 1717.

1718. The seller is bound to deliver the property in the state it is in at the time of the sale, with all its accessories.

1991, c. 64, s. 1718.

1719. The seller is bound to surrender to the buyer the titles of ownership in his possession and, in the case of the sale of an immovable, a copy of the deed of acquisition of the immovable, of any previous titles and of any location certificate in his possession.

1991, c. 64, s. 1719.

1720. The seller is bound to deliver the area, contents or quantity specified in the contract, whether the sale was made for a price based on measurements or for a flat price, unless it is obvious that the certain and determinate property was sold without regard to such area, contents or quantity.

1991, c. 64, s. 1720.

1721. A seller having granted a term for payment is not bound to deliver the property if the buyer has become insolvent since the sale.

1991, c. 64, s. 1721.

1722. Delivery expenses are assumed by the seller and removal expenses, by the buyer.

1991, c. 64, s. 1722.

II — Warranty of ownership

1723. The seller is bound to warrant the buyer that the property is free of all rights except those he has declared at the time of the sale.

The seller is bound to discharge the property of all hypothecs, even declared or registered, unless the buyer has assumed the debt so secured.

1991, c. 64, s. 1723.

1724. The seller is warrantor towards the buyer for any encroachment on his part unless he has declared it at the time of the sale.

The seller is also warrantor for any encroachment commenced with his knowledge by a third person before the sale.

1991, c. 64, s. 1724.

1725. The seller of an immovable is warrantor towards the buyer for any violation of restrictions of public law affecting the property which are exceptions to the ordinary law of ownership.

The seller is not warrantor towards the buyer where he has given notice of these restrictions to the buyer at the time of the sale, where a prudent and diligent buyer could have

discovered them by reason of the nature, location and use of the premises or where such restrictions have been registered in the registry office.

1991, c. 64, s. 1725.

III — Warranty of quality

1726. The seller is bound to warrant the buyer that the property and its accessories are, at the time of the sale, free of latent defects which render it unfit for the use for which it was intended or which so diminish its usefulness that the buyer would not have bought it or paid so high a price if he had been aware of them.

The seller is not bound, however, to warrant against any latent defect known to the buyer or any apparent defect; an apparent defect is a defect that can be perceived by a prudent and diligent buyer without any need of expert assistance.

1991, c. 64, s. 1726.

1727. If the property perishes by reason of a latent defect that existed at the time of the sale, the loss is borne by the seller, who is bound to restore the price; if the loss results from superior force or is due to the fault of the buyer, the buyer shall deduct from his claim the value of the property in the state it was in at the time of the loss.

1991, c. 64, s. 1727.

1728. If the seller was aware or could not have been unaware of the latent defect, he is bound not only to restore the price, but to pay all damages suffered by the buyer.

1991, c. 64, s. 1728.

1729. A defect is presumed to have existed at the time of a sale by a professional seller if the property malfunctions or deteriorates prematurely in comparison with identical items of property or items of the same type; such a presumption is not made, however, where the defect is due to improper use of the property by the buyer.

1991, c. 64, s. 1729.

1730. The manufacturer, any person who distributes the property under his name or as his own, and any supplier of the property, in particular the wholesaler and the importer, are also bound to warrant the buyer in the same manner as the seller.

1991, c. 64, s. 1730.

1731. Sale under judicial authority does not give rise to any obligation of warranty of the quality of the sold property.

1991, c. 64, s. 1731.

IV — Conventional warranty

1732. The parties may, in their contract, add to the obligations of legal warranty, diminish its effects or exclude it altogether but in no case may the seller exempt himself from his personal fault.

1991, c. 64, s. 1732.

1733. A seller may not exclude or limit his liability unless he has disclosed the defects of which he was aware or could not have been unaware and which affect the right of ownership or the quality of the property.

An exception may be made to this rule where a buyer buys property at his own risk from a seller who is not a professional seller.

1991, c. 64, s. 1733.

§5. — *Obligations of the buyer*

1734. The buyer is bound to take delivery of the property sold, and to pay the price thereof at the time and place of delivery. He is also bound to pay any expenses related to the deed of sale.

1991, c. 64, s. 1734.

1735. The buyer owes interest on the sale price from the time of delivery of the property or the expiry of the period agreed by the parties.

1991, c. 64, s. 1735.

§6. — *Special rules regarding the exercise of the rights of the parties*

I — Rights of the buyer

1736. The buyer of movable property may, if the seller fails to deliver it, consider the sale resolved if the seller is in default by operation of law or if he fails to perform his obligation within the time allowed in the notice of default.

1991, c. 64, s. 1736.

1737. Where the seller is bound to deliver the area, contents or quantity specified in the contract and is unable to do so, the buyer may obtain a reduction of the price or, if the difference causes him serious prejudice, resolution of the sale.

Where the area, contents or quantity exceeds that specified in the contract, the buyer is bound to pay for the excess or to restore it to the seller.

1991, c. 64, s. 1737.

1738. A buyer who discovers a risk of infringement of his right of ownership shall, within

a reasonable time after discovering it, give notice to the seller, in writing, of the right or claim of the third person, specifying its nature.

The seller may not invoke tardy notice from the buyer if he was aware of the right or claim or could not have been unaware of it.

1991, c. 64, s. 1738.

1739. A buyer who ascertains that the property is defective may give notice in writing of the defect to the seller only within a reasonable time after discovering it. The time begins to run, where the defect appears gradually, on the day that the buyer could have suspected the seriousness and extent of the defect.

The seller may not invoke tardy notice from the buyer if he was aware of the defect or could not have been unaware of it.

1991, c. 64, s. 1739.

II — Rights of the seller

1740. The seller of movable property may, if the buyer fails to pay the sale price and to accept delivery of it, consider the sale resolved if the buyer is in default by operation of law or if he fails to perform his obligations within the time allowed in the notice of default.

The seller may also, where it appears that the buyer will not perform a substantial part of his obligations, stop delivery of the property in transit.

1991, c. 64, s. 1740.

1741. Except in the case of a sale with a term, the seller of movable property may, within thirty days of delivery, consider the sale resolved and revendicate the property if the buyer, being in default, has failed to pay the price and if the property is still entire and in the same condition and has not passed into the hands of a third person who has paid the price thereof, or of a hypothecary creditor who has obtained surrender thereof.

Where the buyer is in default to pay the price and the property meets the conditions prescribed for resolution of the sale, the seizure of the property by a third person is no hindrance to the rights of the seller.

1991, c. 64, s. 1741.

1742. The seller of immovable property may not apply for resolution of the sale for failure by the buyer to perform one of his obligations unless the contract specially stipulates that right.

If the seller meets the conditions for applying for resolution, he is bound to exercise his right within five years after the sale.

1991, c. 64, s. 1742.

1743. A seller of immovable property wishing to avail himself of a resolatory clause shall make a demand to the buyer and, where applicable, any subsequent acquirer, to remedy his default within sixty days after the demand is entered in the land register; the rules pertaining to taking in payment set out in the Book on Preference and Hypothec and the measures to be taken prior to the exercise of that right apply, adapted as required, to the resolution of the sale.

A seller who takes back property by exercising a resolatory clause takes it back free of any charges which the buyer may have placed on it after the seller registered his rights.

1991, c. 64, s. 1743.

§7. — Various modes of sale

I — Trial sales

1744. The sale of property on trial is presumed to be made under a suspensive condition.

Where the trial period is not stipulated, the condition is fulfilled upon the buyer's failure to inform the seller of his refusal within thirty days after delivery of the property.

1991, c. 64, s. 1744.

II — Instalment sales

1745. An instalment sale is a term sale by which the seller reserves ownership of the property until full payment of the sale price.

A reservation of ownership in respect of a road vehicle or other movable property determined by regulation, or in respect of any movable property acquired for the service or operation of an enterprise, has effect against third persons only if it has been published; effect against third persons operates from the date of the sale provided the reservation of ownership is published within fifteen days. As well, the transfer of such a reservation has effect against third persons only if it has been published.

1991, c. 64, s. 1745; 1998, c. 5, s. 2.

1746. An instalment sale transfers to the buyer the risks of loss of the property, except in the case of a consumer contract or where the parties have stipulated otherwise.

1991, c. 64, s. 1746.

1747. The balance owing by the buyer becomes exigible where the property is sold under judicial authority or where the buyer assigns his right in the property to a third person without the consent of the seller.

1991, c. 64, s. 1747.

1748. Where the buyer fails to pay the sale price in accordance with the terms and conditions of the contract, the seller may exact immediate payment of the instalments due or take back the sold property; if the contract contains a clause of forfeiture of benefit of the term, the seller may instead exact payment of the balance of the sale price.

1991, c. 64, s. 1748.

1749. A seller or transferee who, upon the default of the buyer, elects to take back the property sold is governed by the rules regarding the exercise of hypothecary rights set out in the Book on Prior Claims and Hypothecs; however, in the case of a consumer contract, only the rules contained in the Consumer Protection Act are applicable to the exercise by the seller or transferee of the right of repossession.

If the reservation of ownership required publication but was not published, the seller or transferee may take the property back only if it is in the hands of the original buyer; the seller or transferee takes the property back in its existing condition and subject to the rights and charges with which the buyer may have encumbered it.

If the reservation of ownership required publication but was published late, the seller or transferee may likewise take the property back only if it is in the hands of the original buyer, unless the reservation was published before the sale of the property by the original buyer, in which case the seller or transferee may also take the property back if it is in the hands of a subsequent acquirer; in all cases, the seller or transferee takes the property back in its existing condition, but subject only to such rights and charges with which the original buyer may have encumbered it at the time of the publication of the reservation of ownership and which had already been published.

1991, c. 64, s. 1749; 1998, c. 5, s. 3.

III — Sales with right of redemption

1750. A sale with a right of redemption is a sale under a resolutory condition by which the seller transfers ownership of property to the buyer while reserving the right to redeem it.

A right of redemption in respect of a road vehicle or other movable property determined by regulation, or in respect of any movable property acquired for the service or operation of an enterprise, has effect against third persons only if it has been published; effect against third persons operates from the date of the sale provided the right of redemption is published within fifteen days. As well, the transfer of such a right of redemption has effect against third persons only if it has been published.

1991, c. 64, s. 1750; 1998, c. 5, s. 4.

1751. A seller wishing to exercise his right of redemption and take back property shall give notice of his intention to the buyer and, if the right of redemption has been published, to any subsequent acquirer against whom he intends to exercise his right. If the right of redemption has been published, the notice must also be published; in that case, the notice is of twenty days in the case of movable property and sixty days in the case of an immovable. In the case

of a consumer contract, the twenty days' notice is increased to thirty days.

1991, c. 64, s. 1751; 1998, c. 5, s. 5.

1752. Where the seller exercises his right of redemption, he takes back the property free of any charges which the buyer may have encumbered it with, provided the seller's right, if it required publication, was published in due time and in accordance with the rules regarding the publication of rights.

1991, c. 64, s. 1752; 1998, c. 5, s. 6.

1753. The right of redemption may not be stipulated for a term exceeding five years. If the term exceeds five years, it is reduced to five years.

1991, c. 64, s. 1753.

1754. If the buyer of an undivided part of a property subject to a right of redemption acquires the whole property through the effect of a partition, he may oblige the seller, if the seller wishes to exercise his right, to take back the whole property.

1991, c. 64, s. 1754.

1755. Where a sale is made by several persons jointly by way of a single contract or where the seller has left several heirs, the buyer may object to the taking back of part of the property and require the joint seller or coheir to take back the whole property.

In other respects, the rules pertaining to joint or divisible obligations, adapted as required, apply to the exercise of the right of redemption existing for the benefit of several sellers, against several buyers, or between their heirs.

1991, c. 64, s. 1755.

1756. Where the object of the right of redemption is to secure a loan, the seller is deemed to be a borrower and the acquirer is deemed to be a hypothecary creditor. The seller does not, however, lose the right to exercise his right of redemption unless the acquirer follows the rules respecting the exercise of hypothecary rights laid down in the Book on Prior Claims and Hypothecs.

1991, c. 64, s. 1756.

IV — Auction sales

1757. An auction sale is a sale by which property is offered for sale to several persons through the intermediary of a third person, the auctioneer, and declared sold to the last and highest bidder.

1991, c. 64, s. 1757.

1758. An auction sale is either voluntary or forced; forced sales are subject to the rules

contained in the Code of Civil Procedure and to the rules contained under this subheading, so far as they are consistent.

1991, c. 64, s. 1758.

1759. The seller may fix a reserve price or any other conditions of sale. The conditions of sale may not be set up against the successful bidder unless the auctioneer communicates them to the persons present before receiving bids.

1991, c. 64, s. 1759.

1760. The seller may refuse to disclose his identity at the auction but, if his identity is not disclosed to the successful bidder, the auctioneer becomes personally bound by all the obligations of the seller.

1991, c. 64, s. 1760.

1761. At no time may a bidder withdraw his bid.

1991, c. 64, s. 1761.

1762. An auction sale is completed when the auctioneer declares the property sold to the last bidder. Entry of the name and bid of the successful bidder in the auctioneer's register makes proof of the sale; failing such entry, proof by testimony is admissible.

1991, c. 64, s. 1762.

1763. The seller of an immovable and the successful bidder shall sign the deed of sale within ten days after either party so requests.

1991, c. 64, s. 1763.

1764. *(Repealed).*

1991, c. 64, s. 1764; 2002, c. 19, s. 8.

1765. If the buyer fails to pay the price in compliance with the conditions of the sale, the auctioneer may, in addition to the ordinary remedies of a seller, resell the property for false bidding, according to usage and after sufficient notice.

A false bidder may not bid again at a resale on default. He is bound to pay the difference between the price at which the property was sold to him and the resale price, if lesser, but is not entitled to claim any excess amount. He is also, in the case of a forced sale, liable towards the seller, the person from whom the property was seized and the creditors having obtained the judgment, for all interest, costs and damages arising from his default.

1991, c. 64, s. 1765.

1766. A successful bidder whose right of ownership of property acquired at an auction sale

is infringed as a result of seizure of the property by a creditor of the seller may recover the price paid, with interest and costs, from the seller. He may also recover the price, with interest, from the creditors of the seller to whom it has been remitted, but they may set up the benefit of discussion against him.

He may claim damages resulting from any irregularity in the seizure or sale from the seizing creditor.

1991, c. 64, s. 1766.

§8. — *Sale of an enterprise*

1767. *(Repealed).*

1991, c. 64, s. 1767; 2002, c. 19, s. 8.

1768. *(Repealed).*

1991, c. 64, s. 1768; 2002, c. 19, s. 8.

1769. *(Repealed).*

1991, c. 64, s. 1769; 2002, c. 19, s. 8.

1770. *(Repealed).*

1991, c. 64, s. 1770; 2002, c. 19, s. 8.

1771. *(Repealed).*

1991, c. 64, s. 1771; 2002, c. 19, s. 8.

1772. *(Repealed).*

1991, c. 64, s. 1772; 2002, c. 19, s. 8.

1773. *(Repealed).*

1991, c. 64, s. 1773; 2002, c. 19, s. 8.

1774. *(Repealed).*

1991, c. 64, s. 1774; 2002, c. 19, s. 8.

1775. *(Repealed).*

1991, c. 64, s. 1775; 2002, c. 19, s. 8.

1776. *(Repealed).*

1991, c. 64, s. 1776; 2002, c. 19, s. 8.

1777. *(Repealed).*

1991, c. 64, s. 1777; 2002, c. 19, s. 8.

1778. *(Repealed).*

1991, c. 64, s. 1778; 2002, c. 19, s. 8.

§9. — Sale of certain incorporeal property

I — Sale of rights of succession

1779. A person who sells rights of succession without specifying in detail the property affected warrants only his quality as an heir.

1991, c. 64, s. 1779.

1780. The seller is bound to hand over the fruits and revenues he has received to the buyer, together with the capital of any claim due and the price of any property he has sold which formed part of the succession.

1991, c. 64, s. 1780.

1781. The buyer is bound to reimburse the seller for the debts and liquidation expenses of the succession that he has paid and all amounts owed to him by the succession.

The buyer shall also pay the debts of the succession for which the seller is liable.

1991, c. 64, s. 1781.

II — Sale of litigious rights

1782. A right is litigious when it is uncertain, contested or contestable by the debtor, whether an action is pending or there is reason to presume that it will become necessary.

1991, c. 64, s. 1782.

1783. No judge, advocate, notary or officer of justice may acquire litigious rights, on pain of absolute nullity of the sale.

1991, c. 64, s. 1783.

1784. Where litigious rights are sold, the person from whom they are claimed is fully discharged by paying to the buyer the sale price, the costs related to the sale and interest on the price computed from the day on which the buyer paid it.

This right of redemption may not be exercised where the sale is made to a creditor in payment of what is due to him, to a coheir or co-owner of the rights sold or to the possessor of the property subject to the right. Nor may it be exercised where a court has rendered a judgment affirming the rights sold or where the rights have been established and the case is ready for judgment.

1991, c. 64, s. 1784.

SECTION II

SPECIAL RULES REGARDING SALE OF RESIDENTIAL IMMOVABLES

1785. The sale of an existing or planned residential immovable by the builder or a promoter to a natural person who acquires it to occupy it shall be preceded by a preliminary contract by which a person promises to buy the immovable, whether or not the sale includes the transfer to him of the seller's rights over the land.

A stipulation that the promisor may withdraw his promise within ten days after signing it shall be included in the preliminary contract.

1991, c. 64, s. 1785.

1786. In a preliminary contract, in addition to the name and address of the seller and of the promisor, an indication shall be included of the work to be performed, the sale price, the date of delivery and the real rights affecting the immovable, as well as any useful information pertaining to the features of the immovable and, where the sale price is subject to review, the terms and conditions of revision.

Where the preliminary contract provides for an indemnity in case of exercise of the right of withdrawal, the indemnity never exceeds one-half of one per cent of the agreed sale price.

1991, c. 64, s. 1786.

1787. Where a fraction of an immovable under divided co-ownership or an undivided part of a residential immovable comprising or forming part of a development which comprises at least ten dwellings is sold, the seller shall give the promisor a memorandum, at the time of signing the preliminary contract; he shall also furnish the memorandum where a residence forming part of a development comprising at least ten residences and having common facilities is sold.

A memorandum shall also be given where the same fraction of an immovable under co-ownership is sold to several persons who thereby acquire a right of enjoyment in the fraction, periodically and successively.

1991, c. 64, s. 1787.

1788. The memorandum complements the preliminary contract. It contains the names of the architects, engineers, builders and promoters, a plan of the overall real estate

development project and, where applicable, the general development plan of the project and a summary of the descriptive specifications. It also contains the budget forecast, indicates the common facilities and contains information on the management of the immovable and, where applicable, on the right of emphyteusis or superficies affecting the immovable.

A copy or summary of the declaration of co-ownership or indivision agreement and of the by-laws of the immovable shall be appended to the memorandum even if they are draft documents.

1991, c. 64, s. 1788.

1789. Where a fraction of an immovable under divided co-ownership is sold, the memorandum contains a statement of the leases granted by the promoter or the builder on the private or common portions of the immovable and indicates the maximum number of fractions intended for lease by the promoter or builder.

1991, c. 64, s. 1789.

1790. Where the promoter or builder, by granting a lease, exceeds the maximum number indicated in the memorandum, the syndicate of co-owners, after notifying the lessor and the lessee, may demand the resiliation of the lease. If there are several leases in excess of the maximum number, the most recent leases shall be resiliated first.

1991, c. 64, s. 1790.

1791. The budget forecast shall be prepared on the basis of one year of full occupancy of the immovable; in the case of an immovable under divided co-ownership, it is prepared for a period beginning on the date of registration of the declaration of co-ownership.

A budget includes, in particular, a statement of debts and claims, revenues and expenditures and common expenses. It also indicates, for each fraction, the likely amount of real estate taxes, the rate of such taxes and the annual expenses payable, including, where applicable, the contribution to the contingency fund.

1991, c. 64, s. 1791.

1792. The sale of a fraction of an immovable under co-ownership may be resolved without formality where the declaration of co-ownership is not registered within thirty days after the date on which it may be registered pursuant to the Book on the Publication of Rights.

1991, c. 64, s. 1792.

1793. The sale of a residential immovable that is not preceded by the preliminary contract may be annulled on the application of the buyer if he shows that he suffers serious prejudice therefrom.

1991, c. 64, s. 1793.

1794. The sale, by a contractor, of land belonging to him together with an existing or planned residential immovable is subject to the rules regarding contracts for work or

services pertaining to warranties, adapted as required. Those rules also apply to sales by a real estate promoter.

1991, c. 64, s. 1794.

SECTION III

VARIOUS CONTRACTS SIMILAR TO SALE

§1. — *Exchange*

1795. Exchange is a contract by which the parties transfer ownership of property other than money to each other.

1991, c. 64, s. 1795.

1796. Where one of the parties proves, even after having received the property transferred to him in exchange, that the other party was not the owner of the property, he may not be compelled to deliver the property he had promised in exchange, but only to return the property he has received.

1991, c. 64, s. 1796.

1797. A party who is evicted of the property he has received in exchange may claim damages or recover the property he has transferred.

1991, c. 64, s. 1797.

1798. In all other respects, the rules pertaining to contracts of sale apply to contracts of exchange.

1991, c. 64, s. 1798.

§2. — *Giving in payment*

1799. Giving in payment is a contract by which a debtor transfers ownership of property to his creditor, who is willing to take it in place and payment of a sum of money or some other property due to him.

1991, c. 64, s. 1799.

1800. Giving in payment is subject to the rules pertaining to contracts of sale and the person who so transfers property is bound to the same warranties as a seller.

Giving in payment is perfected only by delivery of the property.

1991, c. 64, s. 1800.

1801. Any clause by which a creditor, with a view to securing the performance of the

obligation of his debtor, reserves the right to become the irrevocable owner of the property or to dispose of it is deemed not written.

1991, c. 64, s. 1801.

§3. — *Alienation for rent*

1802. Alienation for rent is a contract by which the lessor transfers the ownership of an immovable to a lessee in return for a ground rent which the latter obligates himself to pay.

The rent is payable in money or in kind, at the end of each year, from the date of constitution of the rent.

1991, c. 64, s. 1802.

1803. The lessee may free himself at any time from the annual payments of rent by offering to reimburse the capital value of the rent and renouncing the recovery of the payments made, but he may not substitute an insurer to make the payments in his place.

1991, c. 64, s. 1803.

1804. The lessee is personally liable towards the lessor for the rent. He is not discharged from his obligation by his abandonment of the immovable or its destruction by superior force.

1991, c. 64, s. 1804.

1805. In all other respects, the rules pertaining to contracts of sale and to annuities apply to contracts of alienation for rent.

1991, c. 64, s. 1805.

CHAPTER II

GIFTS

SECTION I

NATURE AND SCOPE OF GIFTS

1806. Gift is a contract by which a person, the donor, transfers ownership of property by gratuitous title to another person, the donee; a dismemberment of the right of ownership, or any other right held by the person, may also be transferred by gift.

Gifts may be *inter vivos* or *mortis causa*.

1991, c. 64, s. 1806.

1807. A gift which entails actual divesting of the donor in the sense that the donor actually

becomes the debtor of the donee is a gift *inter vivos*.

The fact that the transfer or delivery of the property is subject to a term or that the transfer affects a certain and determinate property which the donor undertakes to acquire or a property determinate only as to kind which the donor undertakes to deliver does not prevent the divesting of the donor from being actual divesting.

1991, c. 64, s. 1807.

1808. A gift whereby the divesting of the donor remains conditional on his death and takes place only at that time is a gift *mortis causa*.

1991, c. 64, s. 1808.

1809. An act by which a person renounces a right that he has not yet acquired or unconditionally renounces a succession or legacy does not constitute a gift.

1991, c. 64, s. 1809.

1810. A remunerative gift or a gift with a charge constitutes a gift only for the value in excess of that of the remuneration or charge.

1991, c. 64, s. 1810.

1811. Indirect gifts and disguised gifts are governed by this chapter, except as to their form.

1991, c. 64, s. 1811.

1812. The promise of a gift does not constitute a gift but only confers on the beneficiary of the promise the right to claim damages from the promisor, on his failure to fulfil his promise, equivalent to the benefits which the beneficiary has granted and the expenses he has incurred in consideration of the promise.

1991, c. 64, s. 1812.

SECTION II

CERTAIN CONDITIONS PERTAINING TO GIFTS

§1. — Capacity to make and receive gifts

1813. Minors and protected persons of full age, even represented by their tutors or curators, may not make gifts except gifts of property of little value or customary presents, subject to the rules pertaining to marriage or civil union contracts.

1991, c. 64, s. 1813; 2002, c. 6, s. 50.

1814. Fathers and mothers or tutors may accept gifts made to minors or, provided they are

born alive and viable, to children conceived but yet unborn.

Only tutors or curators may accept gifts made to protected persons of full age. Minors and persons of full age who have tutors may, nevertheless, accept alone gifts of property of little value or customary presents.

1991, c. 64, s. 1814.

1815. A person of full age who, to accept a gift, requires the assistance of the adviser appointed to him may also make a gift with his assistance.

1991, c. 64, s. 1815.

§2. — *Certain rules governing the validity of gifts*

1816. The gift of property by a person who does not own it or who is not charged with giving it or authorized to give it is null, unless the donor has expressly undertaken to acquire the property.

1991, c. 64, s. 1816.

1817. A gift made to the owner, a director or an employee of a health or social services establishment who is neither the spouse nor a close relative of the donor is null if it was made while the donor was receiving care or services at the establishment.

A gift made to a member of a foster family while the donor was residing with that family is also null.

1991, c. 64, s. 1817.

1818. Gifts *inter vivos* are valid only as to present property.

The gift of future property is deemed to be *mortis causa*, but the gift of both present and future property is deemed to be *mortis causa* only with respect to the future property.

1991, c. 64, s. 1818.

1819. A gift *mortis causa* is null unless it is made by marriage or civil union contract or unless it may be upheld as a legacy.

1991, c. 64, s. 1819; 2002, c. 6, s. 50.

1820. A gift made during the deemed mortal illness of the donor is null as having been made *mortis causa*, whether or not death follows, unless circumstances tend to render it valid.

If the donor recovers and leaves the donee in peaceable possession for three years, the nullity is covered.

1991, c. 64, s. 1820.

1821. A gift *inter vivos* which imposes on the donee the obligation to pay debts or charges other than those existing at the time of the gift is null, unless the nature and amount of those other debts or charges are specified in the contract.

1991, c. 64, s. 1821.

1822. A gift *inter vivos* stipulated to be revocable at the sole discretion of the donor is null, even if it is made by marriage or civil union contract.

1991, c. 64, s. 1822; 2002, c. 6, s. 50.

1823. A gift *inter vivos* made otherwise than by particular title is absolutely null.

1991, c. 64, s. 1823.

§3. — *Form and publication of gifts*

1824. The gift of movable or immovable property is made, on pain of absolute nullity, by notarial act *en minute*, and shall be published.

These rules do not apply where, in the case of the gift of movable property, the consent of the parties is accompanied by delivery and immediate possession of the property.

1991, c. 64, s. 1824.

SECTION III

RIGHTS AND OBLIGATIONS OF THE PARTIES

§1. — *General provisions*

1825. The donor delivers the property by putting the donee in possession of it or allowing him to take possession of it, all hindrances being removed.

1991, c. 64, s. 1825.

1826. The donor is bound to transfer only the rights he holds in the property given.

1991, c. 64, s. 1826.

1827. The donee may not recover from the donor a payment he has made to free the property of a right vested in a third person or to execute a charge, except so far as the payment exceeds the benefit he derives from the gift.

The evicted donee may, however, recover from the donor the expenses paid in connection with the gift in excess of the benefit he derives from it if the eviction, whether total or

partial, results from a defect in the transferred right which the donor was aware of but failed to disclose at the time of the gift.

1991, c. 64, s. 1827.

1828. The donor is not liable for latent defects in the property given.

He is liable, however, for injury caused to the donee as a result of a defect which impairs his physical integrity, if he was aware of the defect but failed to disclose it at the time of the gift.

1991, c. 64, s. 1828.

1829. The donor pays the expenses related to the contract and the donee, those related to the removal of the property.

1991, c. 64, s. 1829.

§2. — *Debts of the donor*

1830. Unless otherwise provided in the contract or by law, the donee is only liable for debts of the donor connected with a universality of assets and liabilities he receives.

1991, c. 64, s. 1830.

§3. — *Charges stipulated in favour of third persons*

1831. A gift may be made with a charge or a stipulation in favour of a third person.

1991, c. 64, s. 1831.

1832. A charge stipulated in favour of several persons with no determination of their respective shares entails, upon the death of one of them, the accretion of his share in favour of the surviving co-beneficiaries.

Where the respective shares of the beneficiaries are determined, the death of one of them does not entail accretion.

1991, c. 64, s. 1832.

1833. The donee is personally liable for charges on the property given.

1991, c. 64, s. 1833.

1834. A charge which, owing to circumstances unforeseeable at the time of the acceptance of the gift, becomes impossible or too burdensome for the donee may be varied or revoked by the court, taking account of the value of the gift, the intention of the donor and the circumstances.

1991, c. 64, s. 1834.

1835. The revocation or lapse of a charge stipulated in favour of a third person benefits the donee, unless another beneficiary is designated.

1991, c. 64, s. 1835.

SECTION IV

REVOCAION OF GIFTS ON ACCOUNT OF INGRATITUDE

1836. Gifts *inter vivos* may be revoked on account of ingratitude.

Ingratitude is a ground of revocation where the donee has behaved in a seriously reprehensible manner towards the donor, having regard to the nature of the gift, the faculties of the parties and the circumstances.

1991, c. 64, s. 1836.

1837. The action in revocation may be brought only during the lifetime of the donee and within one year after the ingratitude became a ground or the day the donor became aware of it.

The death of the donor within the time for bringing an action does not extinguish the right of action, but the heirs of the donor may act only within one year after his death.

1991, c. 64, s. 1837.

1838. The revocation of a gift obliges the donee to restore to the donor what he has received under the contract, in accordance with the rules of this Book pertaining to the restitution of prestations.

The revocation extinguishes, for the future, the charges stipulated in the contract.

1991, c. 64, s. 1838.

SECTION V

GIFTS MADE BY MARRIAGE OR CIVIL UNION CONTRACT

1839. Gifts made by marriage or civil union contract may be *inter vivos* or *mortis causa*.

They are valid only if the contract takes effect.

1991, c. 64, s. 1839; 2002, c. 6, s. 50.

1840. Any person may make a gift *inter vivos* by marriage or civil union contract but only the future spouses, the spouses, their respective children and their common children born or

yet unborn, if they are born alive and viable, may be donees.

The only persons between whom gifts *mortis causa* may be made are those entitled to be beneficiaries of gifts *inter vivos* made by marriage or civil union contract.

1991, c. 64, s. 1840; 2002, c. 6, s. 51.

1841. Gifts *mortis causa*, even those made by particular title, are revocable.

If a donor has stipulated that a gift is irrevocable, however, he may not dispose of the property gratuitously by an act *inter vivos* or by will without the consent of the donee and of all other interested persons, unless the gift consists of property of little value or customary presents. The donor continues nonetheless to hold his rights in the property given and he remains free to alienate it by onerous title.

1991, c. 64, s. 1841.

CHAPTER III

LEASING

1842. Leasing is a contract by which a person, the lessor, puts movable property at the disposal of another person, the lessee, for a fixed term and in return for payment.

The lessor acquires the property that is the subject of the leasing from a third person, at the demand and in accordance with the instructions of the lessee.

Leasing may be entered into for business purposes only.

1991, c. 64, s. 1842.

1843. Property that is the subject of a leasing, even if attached or joined to an immovable, retains its movable nature for as long as the contract lasts, provided it does not lose its individuality.

1991, c. 64, s. 1843.

1844. The lessor shall disclose the contract of leasing in the deed of purchase.

1991, c. 64, s. 1844.

1845. The seller of the property is directly bound towards the lessee by the legal and conventional warranties inherent in the contract of sale.

1991, c. 64, s. 1845.

1846. The lessee assumes all risks of loss of the property, even by superior force, from the time he takes possession of it.

He likewise assumes all maintenance and repair expenses.

1991, c. 64, s. 1846.

1847. The rights of ownership of the lessor have effect against third persons only if they have been published; effect against third persons operates from the date of the leasing contract provided the rights are published within fifteen days.

As well, the transfer of the lessor's rights of ownership has effect against third persons only if it has been published.

1991, c. 64, s. 1847; 1998, c. 5, s. 7.

1848. If the property is not delivered to the lessee within a reasonable time after the formation of the contract or within the time fixed in the demand for delivery, the lessee may, once the lessor is in default, consider the contract of leasing resolved.

1991, c. 64, s. 1848.

1849. Where the contract of leasing is resolved and the lessee has derived a benefit from the contract, the lessor, when returning the prestations he has received from the lessee, may deduct a reasonable sum to take account of such benefit.

1991, c. 64, s. 1849.

1850. Upon termination of the contract of leasing, the lessee is bound to return the property to the lessor unless, where applicable, he has availed himself of the option to acquire it given to him by the contract.

1991, c. 64, s. 1850.

CHAPTER IV

LEASE

SECTION I

NATURE OF LEASE

1851. Lease is a contract by which a person, the lessor, undertakes to provide another person, the lessee, in return for a rent, with the enjoyment of a movable or immovable property for a certain time.

The term of a lease is fixed or indeterminate.

1991, c. 64, s. 1851.

1852. The rights resulting from the lease may be published.

Publication is required, however, in the case of rights under a lease with a term of more than one year in respect of a road vehicle or other movable property determined by regulation, or of any movable property required for the service or operation of an enterprise, subject, in the latter case, to regulatory exclusions; effect of such rights against third persons operates from the date of the lease provided they are published within fifteen days. A lease with a term of one year or less is deemed to have a term of more than one year if, by the operation of a renewal clause or other covenant to the same effect, the term of the lease may be increased to more than one year.

The transfer of rights under a lease requires or is open to publication, according to whether the rights themselves require or are open to publication.

1991, c. 64, s. 1852; 1998, c. 5, s. 8.

1853. The lease of movable property is not presumed; a person using the property by sufferance of the owner is presumed to have borrowed it by virtue of a loan for use.

The lease of immovable property is presumed where a person occupies the premises by sufferance of the owner. The term of the lease is indeterminate; the lease takes effect upon occupancy and entails the obligation to pay a rent corresponding to the rental value.

1991, c. 64, s. 1853.

SECTION II

RIGHTS AND OBLIGATIONS RESULTING FROM LEASE

§1. — General provisions

1854. The lessor is bound to deliver the leased property to the lessee in a good state of repair in all respects and to provide him with peaceable enjoyment of the property throughout the term of the lease.

He is also bound to warrant the lessee that the property may be used for the purpose for which it was leased and to maintain the property for that purpose throughout the term of the lease.

1991, c. 64, s. 1854.

1855. The lessee is bound to pay the agreed rent and to use the property with prudence and diligence during the term of the lease.

1991, c. 64, s. 1855.

1856. Neither the lessor nor the lessee may change the form or destination of the leased property during the term of the lease.

1991, c. 64, s. 1856.

1857. The lessor has the right to ascertain the condition of the leased property, to carry out work thereon and, in the case of an immovable, to have it visited by a prospective lessee or acquirer, but he is bound to exercise his right in a reasonable manner.

1991, c. 64, s. 1857.

1858. The lessor is bound to warrant the lessee against legal disturbances of enjoyment of the leased property.

Before pursuing his remedies, the lessee shall notify the lessor of the disturbance.

1991, c. 64, s. 1858.

1859. The lessor is not liable for damage resulting from the disturbance of enjoyment of the property by the act of a third person; he may be so liable where the third person is also a lessee of that property or is a person whom the lessee allows to use or to have access to the property.

If the enjoyment of the property is diminished by the disturbance, however, the lessee retains his other remedies against the lessor.

1991, c. 64, s. 1859.

1860. A lessee is bound to act in such a way as not to disturb the normal enjoyment of the other lessees.

He is liable, towards the lessor and the other lessees, for damage that may result from a violation of that obligation, whether the violation is due to his own act or to the act of persons he allows to use or to have access to the property.

In case of violation of this obligation, the lessor may demand rescission of the lease.

1991, c. 64, s. 1860.

1861. A lessee who is disturbed by another lessee or by persons whom another lessee allows to use or to have access to the property may obtain, according to the circumstances, a reduction of rent or the rescission of the lease, if he notified the common lessor of the disturbance and if the disturbance persists.

He may also recover damages from the common lessor unless the lessor proves that he acted with prudence and diligence; the lessor has a recourse against the lessee at fault for compensation for the injury suffered by him.

1991, c. 64, s. 1861.

1862. The lessee is liable for damage suffered by the lessor by reason of loss affecting the leased property unless he proves that the loss is not due to his fault or that of persons he allows to use or to have access to the property.

Where the leased property is an immovable, the lessee is not liable for damages resulting from a fire unless it is proved that the fire was due to his fault or that of persons he allowed to have access to the immovable.

1991, c. 64, s. 1862; 2002, c. 19, s. 15.

1863. The nonperformance of an obligation by one of the parties entitles the other party to apply for, in addition to damages, specific performance of the obligation in cases which admit of it. He may apply for the rescission of the lease where the nonperformance causes serious injury to him or, in the case of the lease of an immovable, to the other occupants.

The nonperformance also entitles the lessee to apply for a reduction of rent; where the court grants it, the lessor, upon remedying his default, is entitled to reestablish the rent for the future.

1991, c. 64, s. 1863.

§2. — *Repairs*

1864. The lessor is bound, during the term of the lease, to make all necessary repairs to the leased property other than lesser maintenance repairs, which are assumed by the lessee unless they result from normal aging of the property or superior force.

1991, c. 64, s. 1864.

1865. The lessee shall allow urgent and necessary repairs to be made to ensure the preservation or enjoyment of the leased property.

A lessor who makes such repairs may require the lessee to vacate or be dispossessed of the property temporarily but, if the repairs are not urgent, he shall first obtain the authorization of the court, which also fixes the conditions required to protect the rights of the lessee.

The lessee retains, according to the circumstances, the right to obtain a reduction of rent, to apply for the rescission of the lease or, if he vacates or is dispossessed of the property temporarily, to demand compensation.

1991, c. 64, s. 1865.

1866. A lessee who becomes aware of a serious defect or deterioration of the leased property is bound to inform the lessor within a reasonable time.

1991, c. 64, s. 1866.

1867. Where a lessor fails to make the repairs or improvements he is bound to make under the lease or by law, the lessee may apply to the court for authorization to carry them out himself.

If the court grants authorization to make the repairs or improvements, it determines their

amount and fixes the conditions to be observed in carrying them out. The lessee may then withhold from his rent the amount of the expenses incurred to carry out the authorized work, up to the amount fixed by the court.

1991, c. 64, s. 1867.

1868. Where the lessee has attempted to inform the lessor, or has informed him but the lessor has not acted in due course, the lessee may undertake repairs or incur expenses, even without the authorization of the court, provided they are urgent and necessary to ensure the preservation or enjoyment of the leased property. The lessor may intervene at any time, however, to pursue the work.

The lessee is entitled to reimbursement of the reasonable expenses he incurred for that purpose; he may, if necessary, withhold the amount of such expenses from his rent.

1991, c. 64, s. 1868.

1869. The lessee is bound to render an account to the lessor of the repairs or improvements made to the property and the expenses incurred and to deliver to him the vouchers for such expenses and, in the case of movable property, the replaced parts.

The lessor is bound to reimburse the lessee for any amount in excess of the rent withheld, but not in excess of the amount the lessee was authorized to disburse, where that is the case.

1991, c. 64, s. 1869.

§3. — *Sublease of property and assignment of lease*

1870. A lessee may sublease all or part of the leased property or assign his lease. In either case, he is bound to give notice of his intention and the name and address of the intended sublessee or assignee to the lessor and to obtain his consent.

1991, c. 64, s. 1870.

1871. The lessor may not refuse to consent to the sublease of the property or the assignment of the lease without a serious reason.

If he refuses, he is bound to inform the lessee of his reasons for refusing within fifteen days after receiving the notice; otherwise, he is deemed to have consented to the sublease or assignment.

1991, c. 64, s. 1871.

1872. A lessor who consents to the sublease of the property or the assignment of the lease may not exact any payment other than the reimbursement of any reasonable expenses resulting from the sublease or assignment.

1991, c. 64, s. 1872.

1873. The assignment of a lease acquits the former lessee of his obligations, unless, where the lease is not a lease of a dwelling, the parties agree otherwise.

1991, c. 64, s. 1873.

1874. Where the lessor brings an action against the lessee, the sublessee may not be bound towards the lessor for any amount except the rent for the sublease which he owes to the lessee; the sublessee may not set up advance payments.

Payments made by the sublessee under a stipulation included in his lease and notified to the lessor, or in accordance with local usage are not considered to be advance payments.

1991, c. 64, s. 1874.

1875. Where the nonperformance of an obligation by a sublessee causes serious damage to the lessor or the other lessees or occupants, the lessor may apply for the rescission of the sublease.

1991, c. 64, s. 1875.

1876. Where a lessor fails to perform his obligations, the sublessee may exercise the rights and remedies of the lessee to have them performed.

1991, c. 64, s. 1876.

SECTION III

TERMINATION OF THE LEASE

1877. A lease with a fixed term terminates of right upon expiry of the term. A lease with an indeterminate term terminates upon rescission by one of the parties.

1991, c. 64, s. 1877.

1878. A lease with a fixed term may be renewed. It may only be renewed expressly, but the lease of an immovable may be renewed tacitly.

1991, c. 64, s. 1878.

1879. A lease is renewed tacitly where the lessee continues to occupy the premises for more than ten days after the expiry of the lease without opposition from the lessor.

In that case, the lease is renewed for one year or for the term of the initial lease, if that was less than one year, on the same conditions. The renewed lease is also subject to renewal.

1991, c. 64, s. 1879.

1880. The term of a lease may not exceed one hundred years. If it exceeds one hundred

years, it is reduced to that term.

1991, c. 64, s. 1880.

1881. Security given by a third person to secure the performance of the obligations of the lessee does not extend to a renewed lease.

1991, c. 64, s. 1881.

1882. A party who intends to resiliate a lease with an indeterminate term shall give the other party notice to that effect.

The term of the notice is of the same duration as the term fixed for payment of the rent, but may not be of more than three months. Where the leased property is a movable, however, the notice is of ten days, whatever the period fixed for payment of the rent may be.

1991, c. 64, s. 1882.

1883. A lessee against whom proceedings for resiliation of a lease are brought for non-payment of the rent may avoid the resiliation by paying, before judgment, in addition to the rent due and costs, interest at the rate fixed in accordance with section 28 of the Act respecting the Ministère du Revenu or at any other lower rate agreed with the lessor.

1991, c. 64, s. 1883.

1884. A lease is not resiliated by the death of either party.

1991, c. 64, s. 1884.

1885. Where the lease of an immovable is for a fixed term, the lessee shall allow the premises to be visited and signs to be posted, for leasing purposes, during the three months preceding the expiry of the lease, or during the month preceding it if the lease is for less than one year.

Where the lease is for an indeterminate term, the lessee is bound to allow such activities from the date of the notice of resiliation.

1991, c. 64, s. 1885.

1886. Voluntary or forced alienation of leased property or extinction of the lessor's title for any other reason does not terminate the lease of right.

1991, c. 64, s. 1886.

1887. The acquirer or the person who benefits from the extinction of title may resiliate the lease, if it is a lease with an indeterminate term, in accordance with the ordinary rules pertaining to resiliation contained in this section.

In the case of the lease of an immovable with a fixed term and if more than twelve months

remain from the date of alienation or extinction of title, he may resiliate it upon expiry of the twelve months by giving the lessee written notice of six months. He may not resiliate the lease if it was registered in the registry office before the deed of alienation or the act by which the title is extinguished was so registered.

In the case of the lease of a movable with a fixed term, notice is of one month.

1991, c. 64, s. 1887.

1888. The total expropriation of leased property terminates the lease from the date on which the expropriating party is allowed to take possession of the property in accordance with the Expropriation Act.

In the case of partial expropriation, the lessee may, according to the circumstances, obtain a reduction of rent or the resiliation of his lease.

1991, c. 64, s. 1888.

1889. The lessor of an immovable may obtain the eviction of a lessee who continues to occupy the leased premises after the expiry of the lease or after the date for surrender of the premises agreed upon during the term of the lease; the lessor of a movable may, in the same circumstances, obtain the handing over of the property.

1991, c. 64, s. 1889.

1890. Upon termination of the lease, the lessee is bound to surrender the property in the condition in which he received it but he is not liable for changes resulting from aging or fair wear and tear of the property or superior force.

The condition of the property may be established by the description made or the photographs taken by the parties; if it is not so established, the lessee is presumed to have received the property in good condition at the beginning of the lease.

1991, c. 64, s. 1890.

1891. Upon termination of the lease, the lessee is bound to remove all the constructions, works or plantations he has made.

If they cannot be removed without deteriorating the property, the lessor may retain them by paying the value thereof to the lessee or compel the lessee to remove them and to restore the property to the condition in which it was when he received it.

If the property cannot be restored to its original condition, the lessor may retain the constructions, works or plantations without compensation.

1991, c. 64, s. 1891.

SECTION IV

SPECIAL RULES RESPECTING LEASES OF DWELLINGS

§1. — *Application*

1892. The lease of a room, of a mobile home placed on a chassis, with or without a permanent foundation, or of land intended for the emplacement of a mobile home is deemed to be the lease of a dwelling.

The provisions of this section also govern leases relating to the services, accessories and dependencies attached to a dwelling, a room, a mobile home or land.

The provisions of this section do not apply to

- (1) the lease of a dwelling leased as a vacation resort;
- (2) the lease of a dwelling in which over one-third of the total floor area is used for purposes other than residential purposes;
- (3) the lease of a room situated in a hotel establishment;
- (4) the lease of a room situated in the principal residence of the lessor, if not more than two rooms are rented or offered for rent and if the room has neither a separate entrance from the outside nor sanitary facilities separate from those used by the lessor;
- (5) the lease of a room situated in a health or social services institution, except pursuant to article 1974.

1991, c. 64, s. 1892.

1893. A clause in a lease respecting a dwelling which is inconsistent with the provisions of this section, the second paragraph of article 1854 or articles 1856 to 1858, 1860 to 1863, 1865, 1866, 1868 to 1872, 1875, 1876 and 1883 is without effect.

1991, c. 64, s. 1893.

§2. — *Lease*

1894. Before entering into a lease, the lessor is bound to give the lessee, where applicable, a copy of the by-laws of the immovable which pertain to the rules respecting the enjoyment, use and maintenance of the dwelling and of the common premises.

The by-laws form part of the lease.

1991, c. 64, s. 1894.

1895. Within ten days after entering into the lease, the lessor is bound to give the lessee a copy of the lease or, in the case of an oral lease, a writing setting forth the name and address of the lessor, the name of the lessee, the rent and the address of the leased property, and containing the text of the particulars prescribed by the regulations of the Government. The writing forms part of the lease. The lease or writing shall be made on the form the use of

which is made mandatory by the regulations of the Government.

Where the lease is renewed and the parties agree to modify it, the lessor is bound to give a writing evidencing the modifications to the initial lease to the lessee before the beginning of the renewal.

The lessee may not apply for resiliation of the lease on the ground that the lessor has failed to comply with these prescriptions.

1991, c. 64, s. 1895; 1995, c. 61, s. 2.

1896. At the time of entering into a lease, the lessor shall give a notice to the new lessee, indicating the lowest rent paid in the twelve months preceding the beginning of the lease or the rent fixed by the court during the same period, as the case may be, and containing any other particular prescribed by the regulations of the Government.

The lessor is not bound to give the notice in the case of the lease of an immovable referred to in articles 1955 and 1956.

1991, c. 64, s. 1896.

1897. The lease and the by-laws of the immovable shall be drawn up in French. They may, however, be drawn up in another language at the express wish of the parties.

1991, c. 64, s. 1897.

1898. Every notice relating to a lease, except notice given by the lessor with a view to having access to the dwelling, shall be given in writing at the address indicated in the lease or, after the lease has been entered into, at the new address of the party, if the other party has been informed of it; the notice shall be drawn up in the same language as the lease and conform to the rules prescribed by regulation.

A notice that does not conform to the prescribed requirements may not be set up against the addressee unless the person who gave it proves to the court that the addressee has not suffered any damage as a consequence.

1991, c. 64, s. 1898.

1899. A lessor may not refuse to enter into a lease with a person or to maintain the person in his or her rights, or impose more onerous conditions on the person for the sole reason that the person is pregnant or has one or several children, unless the refusal is warranted by the size of the dwelling; nor can he so act for the sole reason that the person has exercised his or her rights under this chapter or the Act respecting the Régie du logement.

Punitive damages may be awarded in cases where this provision is violated.

1991, c. 64, s. 1899.

1900. A clause which limits the liability of the lessor or exempts him from liability or

renders the lessee liable for damage caused without his fault is without effect.

A clause to modify the rights of a lessee by reason of an increase in the number of occupants, unless the size of the dwelling warrants it, or to limit the right of a lessee to purchase property or obtain services from such persons as he chooses, and on such terms and conditions as he sees fit, is also without effect.

1991, c. 64, s. 1900.

1901. A clause stipulating a penalty in an amount exceeding the value of the damage actually suffered by the lessor, or imposing an obligation on the lessee which is unreasonable in the circumstances, is an abusive clause.

Such a clause is null or any obligation arising from it may be reduced.

1991, c. 64, s. 1901.

1902. Neither the lessor nor any other person may harass a lessee in such a manner as to limit his right to peaceable enjoyment of the premises or to induce him to leave the dwelling.

A lessee who suffers harassment may demand that the lessor or any other person who has harassed him be condemned to pay punitive damages.

1991, c. 64, s. 1902.

§3. — *Rent*

1903. The rent agreed upon shall be indicated in the lease.

It is payable in equal instalments, except the last, which may be less; it is payable on the first day of each payment period, unless otherwise agreed.

1991, c. 64, s. 1903.

1904. The lessor may not exact any instalment in excess of one month's rent; he may not exact payment of rent in advance for more than the first payment period or, if that period exceeds one month, payment of more than one month's rent.

Nor may he exact any amount of money other than the rent, in the form of a deposit or otherwise, or demand that payment be made by postdated cheque or any other postdated instrument.

1991, c. 64, s. 1904.

1905. A clause in a lease stipulating that the full amount of the rent will be exigible in the event of the failure by the lessee to pay an instalment is without effect.

1991, c. 64, s. 1905.

1906. A clause in a lease with a fixed term of twelve months or less providing for an adjustment of the rent during the term of the lease is without effect.

A clause in a lease with a term of more than twelve months providing for an adjustment of the rent during the first twelve months of the lease or more than once during each twelve month period is also without effect.

1991, c. 64, s. 1906.

1907. Where the lessor fails to perform his obligations, the lessee may apply to the court for authorization to perform them himself. The parties are then subject to the provisions of articles 1867 and 1869.

The lessee may also deposit his rent in the office of the court, if he gives the lessor prior notice of ten days indicating the grounds for depositing it and if the court, considering that the grounds are serious, authorizes the deposit and fixes the amount and conditions of the deposit.

1991, c. 64, s. 1907.

1908. Where, following the alienation of an immovable, the registration of a hypothec against the rent or an assignment of claim, the lessee is not personally informed of the name and address of the new lessor or of the person to whom he owes payment of the rent, he may, with the authorization of the court, deposit his rent in the office of the court.

Deposit may also be authorized where, for any other serious reason, the lessee is not certain of the identity of the person to whom he owes payment of the rent, where the lessor cannot be found or where he refuses payment of the rent.

1991, c. 64, s. 1908.

1909. The court authorizes the remittance of the deposit where the person to whom the lessee owes payment of the rent is identified or has been found or where the lessor performs his obligations; otherwise, it may permit the lessee to continue to deposit his rent until the identification is made or until the lessor performs his obligations. The court may also authorize the remittance of the deposit to the lessee to enable him to perform the obligations of the lessor.

1991, c. 64, s. 1909.

§4. — Condition of dwelling

1910. A lessor is bound to deliver a dwelling in good habitable condition; he is bound to maintain it in that condition throughout the term of the lease.

A stipulation whereby a lessee acknowledges that the dwelling is in good habitable condition is without effect.

1991, c. 64, s. 1910.

1911. The lessor is bound to deliver the dwelling in clean condition and the lessee is bound to keep it so.

Where the lessor carries out work in the dwelling, he shall restore it to clean condition.

1991, c. 64, s. 1911.

1912. The following give rise to the same remedies as failure to perform an obligation under the lease:

(1) failure on the part of the lessor or the lessee to comply with an obligation imposed by law with respect to the safety and sanitation of dwellings;

(2) failure on the part of the lessor to comply with the minimum requirements fixed by law with respect to the maintenance, habitability, safety and sanitation of immovables comprising a dwelling.

1991, c. 64, s. 1912.

1913. The lessor may not offer for rent or deliver a dwelling that is unfit for habitation.

A dwelling is unfit for habitation if it is in such a condition as to be a serious danger to the health or safety of its occupants or the public, or if it has been declared so by the court or by a competent authority.

1991, c. 64, s. 1913.

1914. A lessee may refuse to take possession of a dwelling delivered to him if it is unfit for habitation; in such a case, the lease is resiliated of right.

1991, c. 64, s. 1914.

1915. A lessee may abandon his dwelling if it becomes unfit for habitation, but he is bound to inform the lessor of the condition of the dwelling before abandoning it or within the following ten days.

A lessee who gives such a notice to the lessor is exempt from rent for the period during which the dwelling is unfit for habitation, unless the condition of the dwelling is the result of his own fault.

1991, c. 64, s. 1915.

1916. As soon as the dwelling becomes fit for habitation again, the lessor is bound to inform the lessee, if the lessee has given him his new address; the lessee is then bound to notify the lessor within the following ten days as to whether or not he intends to return to the dwelling.

Where the lessee has not given the lessor his new address or fails to notify him that he intends to return to the dwelling, the lease is resiliated of right and the lessor may enter into a lease with a new lessee.

1991, c. 64, s. 1916.

1917. The court, when seised of any dispute in connection with a lease, may, even of its own motion, declare that the dwelling is unfit for habitation; it may then rule on the rent, fix the conditions necessary for the protection of the rights of the lessee and, where applicable, order that the dwelling be made fit for habitation again.

1991, c. 64, s. 1917.

1918. The lessee may apply to the court for an order enjoining the lessor to perform his obligations regarding the condition of the dwelling, where their nonperformance threatens to make the dwelling unfit for habitation.

1991, c. 64, s. 1918.

1919. The lessee may not, without the consent of the lessor, use or keep in a dwelling a substance which constitutes a risk of fire or explosion and which would lead to an increase in the insurance premiums of the lessor.

1991, c. 64, s. 1919.

1920. The occupants of a dwelling shall be of such a number as to allow each of them to live in normal conditions of comfort and sanitation.

1991, c. 64, s. 1920.

1921. Where a handicapped person significantly limited in his movements occupies a dwelling, whether or not that person is the lessee, the lessor is bound, at the demand of the lessee, to identify the dwelling in accordance with the Act to secure the handicapped in the exercise of their rights.

1991, c. 64, s. 1921.

§5. — *Certain changes to dwelling*

1922. No major improvements or repairs other than urgent improvements or repairs may be made in a dwelling without prior notice from the lessor to the lessee nor, if it is necessary for the lessee to vacate temporarily, until the lessor has offered an indemnity to him equal to the reasonable expenses he will have to incur by reason of the vacancy.

1991, c. 64, s. 1922.

1923. The notice given to the lessee indicates the nature of the work, the date on which it is to begin and an estimation of its duration and, where required, the necessary period of

vacancy; it also specifies the amount of the indemnity offered, where applicable, and any other conditions under which the work will be carried out, if it is of such a nature as to cause a substantial reduction of the enjoyment of the premises.

The notice shall be given at least ten days before the date on which the work is to begin or, if a period of vacancy of more than one week is necessary, at least three months before that date.

1991, c. 64, s. 1923.

1924. The indemnity due to a lessee by reason of temporary vacancy is payable on the date he vacates.

If the indemnity proves inadequate, the lessee may be reimbursed for any reasonable expenses incurred beyond the amount of the indemnity.

The lessee may also, depending on the circumstances, obtain a reduction of rent or resiliation of the lease.

1991, c. 64, s. 1924.

1925. If the notice of the lessor provides for temporary vacancy, the lessee shall notify the lessor within ten days after receiving it that he intends or does not intend to comply with it; otherwise, he is deemed to have refused to vacate the premises.

If the lessee refuses to vacate, the lessor may apply to the court within ten days after the refusal for a ruling on the expediency of the vacancy.

1991, c. 64, s. 1925.

1926. Where temporary vacancy is not required or the lessee agrees to vacate, the lessee, within ten days after receiving the notice, may apply to the court for the modification or suppression of any abusive condition.

1991, c. 64, s. 1926.

1927. The application of the lessor or of the lessee is heard and decided by preference. It suspends the carrying out of the work unless the court orders otherwise.

The court may impose such conditions as it considers just and reasonable.

1991, c. 64, s. 1927.

1928. Where the court is adjudicating upon an application respecting the conditions under which work is to be carried out, it is for the lessor to show that such work and conditions are reasonable and that the vacancy is necessary.

1991, c. 64, s. 1928.

1929. No notice is required and no contestation is allowed where the alterations made have been the subject of an agreement between the lessor and the lessee within the scope of a public housing preservation and restoration programme.

1991, c. 64, s. 1929.

§6. — Access to and visit of dwelling

1930. Where a lessee gives notice of non-renewal or resiliation of the lease to the lessor, he is bound to allow the dwelling to be visited and signs to be posted from the time he gives the notice.

1991, c. 64, s. 1930.

1931. The lessor is bound, except in case of emergency, to give the lessee a prior notice of twenty-four hours of his intention to ascertain the condition of the dwelling, to carry out work in the dwelling or to have it visited by a prospective acquirer.

1991, c. 64, s. 1931.

1932. The lessee may, except in case of emergency, refuse to allow the dwelling to be visited by a prospective lessee or acquirer before 9 a.m. or after 9 p.m.; the same rule applies where the lessor wishes to ascertain the condition of the dwelling.

The lessee may, in any case, refuse to allow the dwelling to be visited if the lessor is unable to be present.

1991, c. 64, s. 1932.

1933. The lessee may not refuse to allow the lessor to have access to the dwelling to carry out work.

He may deny him access before 7 a.m. and after 7 p.m., however, unless the work is urgent.

1991, c. 64, s. 1933.

1934. No lock or other device restricting access to a dwelling may be installed or changed without the consent of the lessor and the lessee.

If either party fails to comply with his obligation, the court may order him to allow the other party to have access to the dwelling.

1991, c. 64, s. 1934.

1935. The lessor may not prohibit a candidate in a provincial, federal, municipal or school election, an official delegate appointed by a national committee or the authorized representative of either from having access to the immovable or dwelling for the purposes of an election campaign or a legally constituted referendum.

1991, c. 64, s. 1935.

§7. — Right to maintain occupancy

I — Holders of the right

1936. Every lessee has a personal right to maintain occupancy; he may not be evicted from the leased dwelling, except in the cases provided for by law.

1991, c. 64, s. 1936.

1937. The voluntary or forced alienation of an immovable comprising a dwelling or the extinction of the title of the lessor does not permit the new lessor to resiliate the lease, which is continued and may be renewed in the same manner as any other lease.

The new lessor has, towards the lessee, the rights and obligations resulting from the lease.

1991, c. 64, s. 1937.

1938. The married or civil union spouse of a lessee, or a person who has been living with the lessee for at least six months, being the *de facto* spouse or blood relative of the lessee or a person connected to the lessee by marriage or a civil union, is entitled to maintain occupancy if he or she continues to occupy the dwelling after the cessation of cohabitation and gives notice to that effect to the lessor within two months after the cessation of cohabitation. He or she becomes the lessee from that moment.

A person living with the lessee at the time of death of the lessee has the same right and becomes the lessee if he or she continues to occupy the dwelling and gives notice to that effect to the lessor within two months after the death. If the person does not avail himself or herself of this right, the liquidator of the succession or, failing him or her, an heir may, in the month which follows the expiry of the period of two months, resiliate the lease by giving notice of one month to that effect to the lessor.

1991, c. 64, s. 1938; 2002, c. 6, s. 52.

1939. If no one is living with the lessee at the time of his death, the liquidator of the succession or, failing him, an heir may resiliate the lease by giving notice of three months to the lessor within six months after the death.

1991, c. 64, s. 1939.

1940. The sublessee of a dwelling is not entitled to maintain occupancy.

The sublease terminates not later than the date on which the lease of the dwelling terminates; however, the sublessee is not required to vacate the premises before receiving notice of ten days to that effect from the sublessor or, failing him, from the principal lessor.

1991, c. 64, s. 1940.

II — Renewal and modification of lease

1941. A lessee entitled to maintain occupancy and having a lease with a fixed term is entitled of right to its renewal at term.

The lease is renewed at term on the same conditions and for the same term or, if the term of the initial lease exceeds twelve months, for a term of twelve months. The parties may, however, agree on a different renewal term.

1991, c. 64, s. 1941.

1942. At the renewal of the lease, the lessor may modify its conditions, particularly the term or the rent, but only if he gives notice of the modification to the lessee not less than three months nor more than six months before term. If the term of the lease is less than twelve months, the notice shall be given not less than one month nor more than two months before term.

A lessor may not modify a lease with an indeterminate term unless he gives the lessee a notice of not less than one month nor more than two months.

The notice is of not less than ten days nor more than twenty days in the case of the lease of a room.

1991, c. 64, s. 1942.

1943. In every notice of modification with a view to an increase of the rent an indication shall be made of the new proposed rent in dollars or the increase expressed in dollars or as a percentage of the rent in force. The increase may be expressed as a percentage of the rent to be determined by the court, where an application for the fixing or review of the rent has been filed.

Where the lessor proposes to modify the term of the lease, the proposed term shall also be indicated in the notice, and the time granted to the lessee to refuse the proposed modification.

1991, c. 64, s. 1943.

1944. The lessor may avoid the renewal of the lease where the lessee has subleased the dwelling for more than twelve months by giving notice, within the same time as for modification of the lease, of his intention to terminate it to the lessee and to the sublessee.

The lessor may similarly avoid the renewal of the lease where the lessee has died and no one was living with him at the time of the death, by giving the notice to the heir or to the liquidator of the succession.

1991, c. 64, s. 1944.

1945. A lessee who objects to the modification proposed by the lessor is bound to notify

the lessor, within one month after receiving the notice of modification of the lease, that he objects or that he is vacating the dwelling; otherwise, he is deemed to have agreed to the renewal of the lease on the conditions proposed by the lessor.

In the case of a lease of a dwelling described in article 1955, however, the lessee shall vacate the dwelling upon termination of the lease if he objects to the proposed modification.

1991, c. 64, s. 1945.

1946. A lessee who has not received a notice of modification of the conditions of the lease from the lessor may avoid the renewal of a lease with a fixed term or terminate a lease with an indeterminate term by giving notice of non-renewal or rescission of the lease to the lessor, within the same time as a lessor giving notice of modification.

1991, c. 64, s. 1946.

III — Fixing conditions of lease

1947. Where a lessee objects to the proposed modification, the lessor may apply to the court, within one month after receiving the notice of objection, for the fixing of the rent or for a ruling on any other modification of the lease, as the case may be; otherwise, the lease is renewed of right on the same conditions.

1991, c. 64, s. 1947.

1948. A lessee who has subleased his dwelling for more than twelve months, or an heir or the liquidator of the succession of a lessee who has died may, within one month after receiving notice of the intention of the lessor to avoid the renewal of the lease, contest the notice on its merits before the court; otherwise, he is deemed to have agreed to terminate the lease.

Where the court grants the application of the lessee after the expiry of the time for giving notice of modification of the lease, the lease is renewed but the lessor may, within one month after the final judgment, apply to the court for the fixing of a new rent.

1991, c. 64, s. 1948.

1949. Where the lease provides for the adjustment of the rent, the parties may apply to the court to contest the excessive or inadequate nature of the proposed or agreed adjustment and for the fixing of the rent.

The application shall be made within one month from the date on which the adjustment is to take effect.

1991, c. 64, s. 1949.

1950. A new lessee or a sublessee may apply to the court for the fixing of the rent if his rent is higher than the lowest rent paid during the twelve months preceding the beginning of the lease or sublease, as the case may be, unless that rent has already been fixed by the court.

He may apply only within ten days after the lease or sublease has been entered into. If at the time the lease or sublease is entered into he has not received the notice from the lessor indicating the lowest rent paid in the preceding year, he may apply no later than two months after the beginning of the lease or sublease; where the lessor has given a notice containing a false statement, the new lessee or sublessee may apply no later than two months after becoming aware of that fact.

1991, c. 64, s. 1950.

1951. A person entitled by law to maintain occupancy and to become lessee upon the cessation of cohabitation with the lessee or the death of the lessee is not considered to be a new lessee.

1991, c. 64, s. 1951.

1952. Where the court authorizes the modification of a condition of a lease, it fixes the rent payable for the dwelling, taking into consideration the relative value of the modification in relation to the rent for the dwelling.

1991, c. 64, s. 1952.

1953. Where the court has an application before it for the fixing or adjustment of rent, it takes into consideration the standards prescribed by regulation.

The rent fixed by the court is in force for the term of the renewed lease or for such term, not in excess of twelve months, as it determines.

If the court grants an increase of rent, it may spread the payment of the arrears over a period not exceeding the term of the renewed lease.

1991, c. 64, s. 1953.

1954. Where the court fixes the rent on the application of a new lessee, it does so for the term of the lease.

Where the term of the lease exceeds twelve months, the lessor may nevertheless have the rent fixed annually. The application may be made no later than three months before the expiry of each period of twelve months from the date on which the fixed rent took effect.

1991, c. 64, s. 1954.

1955. Neither the lessor nor the lessee of a dwelling leased by a housing cooperative to one of its members may apply to the court for the fixing of the rent or the modification of any other condition of the lease.

Nor may the lessor or the lessee of a dwelling situated in a recently erected immovable or an immovable used for renting as a result of a recent change of destination pursue the remedy referred to in the first paragraph within five years after the date on which the immovable is

ready for its intended use.

Such restrictions shall be mentioned, however, in the lease of such a dwelling; if they are not mentioned, they may not be set up by the lessor against the lessee.

1991, c. 64, s. 1955.

1956. The lessor or lessee of a dwelling in low-rental housing may not apply for the fixing of the rent or for the modification of any other condition of the lease except in accordance with the provisions specific to that type of lease.

1991, c. 64, s. 1956.

IV — Repossession of a dwelling and eviction

1957. The lessor of a dwelling who is the owner of the dwelling may repossess it as a residence for himself or herself or for ascendants or descendants in the first degree or for any other relative or person connected by marriage or a civil union of whom the lessor is the main support.

The lessor may also repossess the dwelling as a residence for a spouse of whom the lessor remains the main support after a separation from bed and board or divorce or the dissolution of a civil union.

1991, c. 64, s. 1957; 2002, c. 6, s. 53.

1958. The owner of an undivided share of an immovable may not repossess any dwelling in the immovable unless the only other owner is his or her spouse.

1991, c. 64, s. 1958; 2002, c. 6, s. 54.

1959. The lessor of a dwelling may evict the lessee to divide the dwelling, enlarge it substantially or change its destination.

1991, c. 64, s. 1959.

1960. A lessor wishing to repossess a dwelling or to evict a lessee shall notify him at least six months before the expiry of the lease in the case of a lease with a fixed term; if the term of the lease is six months or less, the notice is of one month.

In the case of a lease with an indeterminate term, the notice shall be given six months before the date of repossession or eviction.

1991, c. 64, s. 1960.

1961. In a notice of repossession, the date fixed for the dwelling to be repossessed, the name of the beneficiary and, where applicable, the degree of relationship or the bond between the beneficiary and the lessor shall be indicated.

In a notice of eviction, the reason for and the date of eviction shall be indicated.

Repossession or eviction may take effect on a later date, however, upon the application of the lessee and with the authorization of the court.

1991, c. 64, s. 1961.

1962. Within one month after receiving notice of repossession, the lessee is bound to notify the lessor as to whether or not he intends to comply with the notice; otherwise, he is deemed to refuse to vacate the dwelling.

1991, c. 64, s. 1962.

1963. If the lessee refuses to vacate the dwelling, the lessor may repossess it with the authorization of the court.

Application for authorization may be made only within one month after the refusal by the lessee; the lessor shall show the court that he truly intends to repossess the dwelling for the purpose mentioned in the notice and not as a pretext for other purposes.

1991, c. 64, s. 1963.

1964. The lessor may not, without the consent of the lessee, avail himself of the right to repossess the dwelling where he owns another dwelling that is vacant or offered for rent on the date fixed for repossession, and that is of the same type as that occupied by the lessee, situated in the same neighbourhood and at equivalent rent.

1991, c. 64, s. 1964.

1965. The lessor shall pay an indemnity equal to three months' rent and reasonable moving expenses to the evicted lessee. If the lessee considers that the prejudice he sustains warrants a greater amount of damages, he may apply to the court for the fixing of the amount of the indemnity.

The indemnity is payable at the expiry of the lease; the moving expenses are payable on presentation of vouchers.

1991, c. 64, s. 1965.

1966. Within one month after receiving the notice of eviction, the lessee may apply to the court to object to the division, enlargement or change of destination of the dwelling; otherwise, he is deemed to have consented to vacate the premises.

Where an objection is brought, the burden is on the lessor to show that he truly intends to divide, enlarge or change the destination of the dwelling and that he is permitted to do so by law.

1991, c. 64, s. 1966.

1967. Where the court authorizes repossession or eviction, it may impose such conditions as it considers just and reasonable, including, in the case of repossession, payment to the lessee of an indemnity equivalent to his moving expenses.

1991, c. 64, s. 1967.

1968. The lessee may recover damages resulting from repossession or eviction in bad faith, whether or not he has consented to it.

He may also apply for punitive damages against the person who has repossessed the dwelling or evicted him in bad faith.

1991, c. 64, s. 1968.

1969. Where the lessor does not exercise his right of repossession or eviction on the fixed date, the lease is renewed of right provided the lessee continues to occupy the dwelling with the consent of the lessor. In that case, the lessor, within one month after the date fixed for repossession or eviction, may apply to the court for the fixing of a new rent.

The lease is also renewed where the court refuses an application for repossession or eviction and renders its decision after expiry of the period provided to avoid the renewal of the lease or to modify it. The lessor may then, within one month after the final decision, apply to the court to fix the rent.

1991, c. 64, s. 1969.

1970. A dwelling that has been the subject of a repossession or eviction may not, without the authorization of the court, be leased or used for a purpose other than that for which the right was exercised.

If the court gives authorization to lease the dwelling, it fixes the rent.

1991, c. 64, s. 1970.

§8. — Resiliation of lease

1971. The lessor may obtain the resiliation of the lease if the lessee is over three weeks late in paying the rent or, if he suffers serious prejudice as a result, where the lessee is frequently late in paying it.

1991, c. 64, s. 1971.

1972. The lessor or the lessee may apply for the resiliation of the lease if the dwelling becomes unfit for habitation.

1991, c. 64, s. 1972.

1973. Where either of the parties applies for the resiliation of the lease, the court may grant

it immediately or order the debtor to perform his obligations within the period it determines, except where payment of the rent is over three weeks late.

Where the debtor does not comply with the decision of the court, the court resiliates the lease on the application of the creditor.

1991, c. 64, s. 1973.

1974. A lessee may resiliate the current lease if he is allocated a dwelling in low-rental housing or if, by reason of a decision of the court, he is relocated in an equivalent dwelling corresponding to his needs; he may also resiliate the current lease if he can no longer occupy his dwelling because of a handicap or, in the case of an elderly person, if he is admitted permanently to a residential and long-term care centre or to a foster home, whether or not he resides in such a place at the time of his admission.

Unless otherwise agreed by the parties, resiliation takes effect three months after the sending of a notice to the lessor, with an attestation from the authority concerned, or one month after the notice if the lease is for an indeterminate term or a term of less than twelve months.

1991, c. 64, s. 1974.

1975. The lease is resiliated of right where a lessee abandons the dwelling without any reason, taking his movable effects with him; it may also be resiliated without further reason, where the dwelling is unfit for habitation and the lessee abandons it without notifying the lessor.

1991, c. 64, s. 1975.

1976. An employer may, where an employee ceases to be in his employ, resiliate a lease that is accessory to the contract of employment by giving the employee prior notice of one month, unless otherwise stipulated in the contract.

An employee may resiliate such a lease upon the termination of the contract of employment by giving prior notice of one month to his employer, unless otherwise stipulated in the contract.

1991, c. 64, s. 1976.

1977. The lease is renewed of right where the court refuses an application for resiliation thereof and renders its decision after expiry of the period provided to avoid the renewal of the lease or to modify it. The lessor may then, within one month after the final decision, apply to the court to fix the rent.

1991, c. 64, s. 1977.

1978. The lessee, on resiliation of the lease or when he vacates the dwelling, shall leave it free of all movable effects except those which belong to the lessor. If the lessee leaves movable effects at the end of the lease or after abandoning the dwelling, the lessor may dispose of them in accordance with the rules prescribed in the Book on Property which apply to the holder of property entrusted and forgotten.

1991, c. 64, s. 1978.

§9. — *Special provisions respecting certain leases*

I — Lease with an educational institution

1979. Every person pursuing studies who leases a dwelling from an educational institution is entitled to maintain occupancy for any period during which he is enrolled in the institution as a full-time student, but is not so entitled if he leases a dwelling from an institution other than the one in which he is enrolled.

A person having a lease for the summer period only is not entitled to maintain occupancy.

1991, c. 64, s. 1979.

1980. A person pursuing studies who wishes to avail himself of the right to maintain occupancy shall give notice of one month before the expiry of the lease that he intends to renew it.

The educational institution may, however, for serious reasons, relocate the person in a dwelling of the same type as that which he occupies, situated in the same neighbourhood and at equivalent rent.

1991, c. 64, s. 1980.

1981. A person pursuing studies may not sublease the dwelling or assign his lease.

1991, c. 64, s. 1981.

1982. The educational institution may resiliate the lease of a person who ceases to be a full-time student. It shall give him prior notice of one month, which may be contested, on its merits, within one month after it is received. The person pursuing studies may, similarly, resiliate the lease.

1991, c. 64, s. 1982.

1983. The lease of a person pursuing studies is resiliated of right when he ends his studies or ceases to be enrolled in the educational institution.

1991, c. 64, s. 1983.

II — Lease of a dwelling in low-rental housing

1984. A dwelling situated in low-rental housing owned or administered by the Société d'habitation du Québec or by a legal person whose operating expenses are met, in whole or in part, by a subsidy from the Société d'habitation du Québec, or a dwelling which is not so situated but whose rent is fixed by by-law of the Société d'habitation du Québec is a dwelling in low-rental housing.

A dwelling for which the Société d'habitation du Québec agrees to pay an amount toward the rent is also a dwelling in low-rental housing but, in this case, the provisions pertaining to the register of lease applications and to the eligible list do not apply where the lessee is selected by an association that is a legal person constituted for that purpose under the Act respecting the Société d'habitation du Québec.

1991, c. 64, s. 1984.

1985. The lessor of a dwelling in low-rental housing shall keep an up-to-date register of lease applications and an eligible list for the lease of a dwelling, in accordance with the by-laws of the Société d'habitation du Québec and with any by-law made by the lessor himself as authorized by and pursuant to the by-laws of the Société d'habitation du Québec.

Where a dwelling is vacant, the lessor shall offer it to a person entered on the eligible list according to the conditions prescribed in the by-laws.

1991, c. 64, s. 1985.

1986. If a lessor refuses to enter the application of a person in the register or to enter his name on the eligible list, the person may apply to the court within one month after the refusal for a review of the decision.

A person whose name is removed from the list or entered on the list for a dwelling of a category or subcategory other than that to which he is entitled may also, within one month after the decision, apply to the court to have the decision of the lessor revised.

In such cases, the lessor has the burden of establishing that he acted within the conditions prescribed in the by-laws. The court may, as the case may be, order the application entered in the register or the name of the person entered, re-entered or reclassified on the eligible list.

1991, c. 64, s. 1986.

1987. If the lessor assigns a dwelling to a person other than the person entitled to it under the by-laws, the person entitled to the dwelling may apply to the court within one month thereafter for a review of the decision.

The lessor has the burden of establishing that he acted within the conditions prescribed in the by-laws; if he fails to do so, the court may order him to house the person in a dwelling of the category to which he is entitled or, if none is vacant, to assign him the next dwelling of that category that becomes vacant. The court may also, in case of emergency, order the lessor to house him in an equivalent dwelling, whether in low-rental housing or not, corresponding to the category of dwelling to which he is entitled. If the rent for that dwelling is higher than the rent the person would have paid for the dwelling he is entitled to, the lessor is bound to pay the excess amount.

1991, c. 64, s. 1987.

1988. Where a dwelling in low-rental housing is assigned following a false statement of

the lessee, the lessor may, within two months after becoming aware of the false statement, apply to the court for the resiliation of the lease or the modification of certain conditions of the lease if, were it not for the false statement, he would not have assigned the dwelling to the lessee or would have done so on different conditions.

1991, c. 64, s. 1988.

1989. A lessee who occupies a dwelling of a category other than that to which he is entitled may apply to the lessor to have his name re-entered on the eligible list.

If the lessor refuses to re-enter the lessee's name or enters it on the list for a category of dwelling other than that to which he is entitled, the lessee may apply to the court to contest his decision within one month after receiving notice of the refusal or the assignment of the dwelling.

1991, c. 64, s. 1989.

1990. The lessor may, at any time, relocate a lessee who occupies a dwelling of a category other than that to which he is entitled in a dwelling of the appropriate category or subcategory on giving him three months' notice.

The lessee may apply to the court for review of the decision within one month after receiving the notice.

1991, c. 64, s. 1990.

1991. If a person who benefits from the right to maintain occupancy ceases to cohabit with the lessee or if the lessee dies, that person is not entitled to renewal of the lease of right if he no longer meets the conditions of allocation prescribed in the by-laws.

The lessor may, in such a case, resiliate the lease by giving the person three months' notice before termination of the lease.

1991, c. 64, s. 1991.

1992. A lessor who notifies the lessee of his intention to increase the rent is not bound to indicate the new rent or the amount of the increase, and the lessee is not bound to respond to such a notice.

However, if the rent is not fixed in accordance with the by-laws of the Société d'habitation du Québec, the lessee may apply to the court, within two months after the fixing of the rent, for its review.

1991, c. 64, s. 1992.

1993. A lessee, within one month after receiving notice of modification of the term or of another condition of the lease, may apply to the court for a ruling on the requested term or modification; otherwise, he is deemed to consent to the new conditions.

A person who benefits from the right to maintain occupancy and who receives a notice of resiliation of the lease may, similarly, contest the resiliation on its merits before the court; otherwise, he is deemed to have agreed to it.

1991, c. 64, s. 1993.

1994. The lessor, at the request of a lessee who has suffered a reduction of income or a change in the composition of his household, is bound to reduce his rent during the term of the lease in accordance with the by-laws of the Société d'habitation du Québec; if he refuses or neglects to do so, the lessee may apply to the court for the reduction.

If the income of the lessee returns to or becomes greater than what it was, the former rent is re-established; the lessee may contest the re-establishment of the rent within one month after it is re-established.

1991, c. 64, s. 1994.

1995. The lessee of a dwelling in low-rental housing may not sublease the dwelling or assign his lease.

He may resiliate the lease at any time by giving three months' notice to the lessor.

1991, c. 64, s. 1995.

III — Lease of land intended for the installation of a mobile home

1996. The lessor of land intended for the installation of a mobile home is bound to deliver the land and maintain it in accordance with the development standards prescribed by law. These obligations form part of the lease.

1991, c. 64, s. 1996.

1997. No lessor may require that he, the lessor, remove the mobile home of the lessee.

1991, c. 64, s. 1997.

1998. The lessor may not limit the right of the lessee of the land to replace his mobile home by another mobile home of his choice.

The lessor may not limit the right of the lessee to alienate or lease his mobile home; nor may he require that he, the lessor, act as the mandatary or that he select the person to act as the mandatary of the lessee for the alienation or lease of the mobile home.

A lessee who alienates his mobile home shall, however, notify the lessor of the land immediately.

1991, c. 64, s. 1998.

1999. The lessor may not require any amount of money from the lessee by reason of the alienation or lease of the mobile home, unless he acts as the mandatary of the lessee for alienation or lease.

1991, c. 64, s. 1999.

2000. The acquirer of a mobile home situated on leased land becomes the lessee of the land unless he notifies the lessor of his intention to leave the premises within one month after the acquisition.

1991, c. 64, s. 2000.

CHAPTER V

AFFREIGHTMENT

SECTION I

GENERAL PROVISIONS

2001. Affreightment is a contract by which a person, the lessor, for a price, also called freight, undertakes to place all or part of a ship at the disposal of another person, the charterer, for navigation.

The contract, if in writing, is evidenced by a charterparty containing the names of the parties, their undertakings under the contract and particulars identifying the ship.

1991, c. 64, s. 2001.

2002. The charterer is bound to pay freight. If no freight has been agreed, he shall pay an amount consistent with market conditions, at the place and time of the contract.

1991, c. 64, s. 2002.

2003. Where the lessor has not been paid at the time of discharge of the cargo from the ship, he may retain the property carried until payment of what is due to him, including the reasonable expenses and damages resulting from the retention.

1991, c. 64, s. 2003.

2004. General average is governed by conventional maritime rules and customs at the place and time of concluding the contract.

1991, c. 64, s. 2004.

2005. The charterer may sublet the ship with the consent of the lessor or use it for carriage under bills of lading; in either case, he remains liable to the lessor for his obligations under the contract of affreightment.

The lessor may, to the extent of what is due to him by the charterer, bring action against the subcharterer for payment of the freight due by the latter, but the subletting of the ship establishes no other direct relationship between the lessor and the subcharterer.

1991, c. 64, s. 2005.

2006. Prescription of an action arising out of a contract of affreightment runs, in the case of a bareboat or time charter, from the expiry of the contract or permanent interruption of its performance or, in the case of a voyage charter, from the complete discharge of the property carried or the event which put an end to the voyage.

Prescription of an action arising out of a contract for the subletting of a ship runs likewise.

1991, c. 64, s. 2006.

SECTION II

SPECIAL RULES GOVERNING DIFFERENT CONTRACTS OF AFFREIGHTMENT

§1. — Bareboat charter

2007. A bareboat charter is a contract of affreightment by which a lessor places an unmanned and unequipped or partly manned and partly equipped ship at the disposal of a charterer for a determinate time, and transfers to him the navigation, management, employment and agency of the ship.

1991, c. 64, s. 2007.

2008. The lessor delivers the ship in a seaworthy condition and fit for the service for which it is intended, at the agreed place and time.

1991, c. 64, s. 2008.

2009. The charterer may use the ship for any purpose for which it is intended, but the lessor may stipulate restrictions as to the use of the ship.

1991, c. 64, s. 2009.

2010. The charterer may use the ship's stores and equipment.

He insures the ship and bears all operating costs. He hires and maintains the crew.

1991, c. 64, s. 2010.

2011. The charterer is bound to warrant the lessor against all remedies of third persons arising out of the operation of the ship.

1991, c. 64, s. 2011.

2012. The charterer is bound to maintain the ship and make the necessary repairs and replacements.

The lessor is bound to make the repairs and replacements required by inherent defects which appear within one year after delivery of the ship to the charterer and if the ship is detained for more than twenty-four hours by reason of such a defect, no freight is payable by the charterer during the detention.

1991, c. 64, s. 2012.

2013. At the expiry of the contract, the charterer returns the ship at the place where it was delivered and in the state in which it was delivered; he is not bound to indemnify the lessor for fair wear and tear of the ship, stores and equipment.

He is bound, however, to return stores, provisions and equipment in quantity and of quality identical to those he received when the ship was delivered to him.

1991, c. 64, s. 2013.

§2. — *Time charter*

2014. A time charter is a contract of affreightment by which a lessor places a fully-equipped and manned ship at the disposal of a charterer for a fixed time and under which he retains the navigation and management of the ship but transfers its employment and agency to the charterer.

1991, c. 64, s. 2014.

2015. The lessor delivers the ship in a seaworthy condition and properly manned and equipped for the service for which it is intended, at the agreed place and time.

1991, c. 64, s. 2015.

2016. The charterer bears the cost of the commercial operation of the ship, in particular wharfage, pilotage and canal dues.

He acquires and pays for the fuel on board when the ship is delivered to him and thereafter provides and pays for fuel of such a grade as to ensure the proper working of the ship.

1991, c. 64, s. 2016.

2017. The master of the ship shall, within the limits stipulated in the contract, follow the instructions of the charterer with respect to the employment and agency of the ship.

If the instructions are inconsistent with the rights of the lessor under the contract, the master may refuse to follow them. If he follows them, he does so without prejudice to the lessor's remedy against the charterer.

1991, c. 64, s. 2017.

2018. The charterer shall indemnify the lessor for any loss or damage caused to the ship as a result of its commercial operation, fair wear and tear excepted.

1991, c. 64, s. 2018.

2019. Freight runs from the day the ship is delivered to the charterer, in accordance with the terms of the contract.

Freight is payable until the day the ship is returned to the lessor; it is not payable, however, for periods during which the working of the ship is prevented by superior force or by a cause imputable to a third person or to the lessor.

1991, c. 64, s. 2019.

2020. The charterer returns the ship at the agreed place and within the agreed time; he gives reasonable prior notice to the lessor. If no place has been agreed for the return of the ship, it is returned at the place at which it was delivered.

1991, c. 64, s. 2020.

§3. — Voyage charter

2021. A voyage charter is a contract of affreightment by which a lessor places all or part of a fully-equipped and manned ship at the disposal of a charterer for the carriage of cargo on one or more specified voyages and under which he retains the navigation, management, employment and agency of the ship.

The contract specifies the nature and quantity of the cargo as well as the place of loading and discharge and the time allowed for those operations.

1991, c. 64, s. 2021.

2022. The lessor presents the ship in a seaworthy condition and properly manned and equipped for the voyage, at the agreed place and time.

Moreover, he is bound to maintain the ship in a seaworthy condition and to use all diligence within his means to prosecute the voyage.

1991, c. 64, s. 2022.

2023. The lessor is responsible, within the limits stipulated in the contract, for loss or damage of the property received on board. He may, however, relieve himself from liability by proving that the damage did not result from failure on his part to perform his obligations.

1991, c. 64, s. 2023.

2024. The charterer is bound to load cargo of the agreed quality in the agreed quantity; if he does not, he is nevertheless bound to pay the stipulated freight.

The charterer may resiliate the contract before loading begins, however; in that case, he shall pay to the lessor an indemnity equal to the loss he suffers, but in no case greater than the amount of the freight.

1991, c. 64, s. 2024.

2025. The charterer shall load and discharge the cargo within the time allowed by the contract or, failing such a stipulation, within a reasonable period or according to the custom of the port.

Where the periods for loading and discharging are fixed separately by the contract, they are not interchangeable and the time used for each operation is computed separately.

1991, c. 64, s. 2025.

2026. The time for loading or discharging runs from the moment the lessor informs the charterer that the ship is ready to load or ready to discharge, after its arrival at port.

1991, c. 64, s. 2026.

2027. Where the time allowed for loading or discharging is exceeded for any reason not imputable to the lessor, the charterer shall pay demurrage from the expiry of the allowed time; demurrage is considered a supplement to freight and is payable for the entire additional time actually required for loading or discharging.

Demurrage not fixed by the contract is calculated at a reasonable rate, according to the custom of the port of loading or discharge or, failing that, according to general custom.

1991, c. 64, s. 2027.

2028. Freight is payable on completion of the voyage. However, it is not due in all circumstances.

Where completion of the voyage is prevented, the charterer is bound to pay freight only if it was prevented by a cause not imputable to the lessor. In that case, freight is due only proportionately to the distance travelled.

1991, c. 64, s. 2028.

2029. The contract is resolved by operation of law, with no claim for damages on either part, if superior force prevents the voyage before its commencement.

The contract stands, however, if superior force prevents the sailing of the ship or the prosecution of the voyage for a time only; in that case, no reduction of freight or damages may be claimed by reason of the delay.

1991, c. 64, s. 2029.

CHAPTER VI

CARRIAGE

SECTION I

RULES APPLICABLE TO ALL MEANS OF TRANSPORTATION

§1. — General provisions

2030. A contract of carriage is a contract by which one person, the carrier, undertakes principally to carry a person or property from one place to another, in return for a price which another person, the passenger or the shipper or receiver of the property, undertakes to pay at the agreed time.

1991, c. 64, s. 2030.

2031. Successive carriage is effected by several carriers in succession, using the same means of transportation; combined carriage is effected by several carriers in succession, using different means of transportation.

1991, c. 64, s. 2031.

2032. Except where it is effected by a carrier offering his services to the public in the course of the activities of his enterprise, gratuitous carriage of a person or property is not governed by the rules contained in this chapter and the carrier is bound only by an obligation of prudence and diligence.

1991, c. 64, s. 2032.

2033. A carrier who provides services to the general public shall carry any person requesting it and any property he is requested to carry, unless he has serious cause for refusal; the passenger, shipper or receiver is bound to follow the instructions given, according to law, by the carrier.

1991, c. 64, s. 2033.

2034. A carrier may not exclude or limit his liability except to the extent and subject to the conditions established by law.

He is liable for any damage resulting from delay, unless he proves superior force.

1991, c. 64, s. 2034.

2035. Where the carrier entrusts another carrier with the performance of all or part of his obligation, the substitute carrier is deemed to be a party to the contract.

The shipper is discharged by payment to one of the carriers.

1991, c. 64, s. 2035.

§2. — Carriage of persons

2036. Carriage of persons includes, in addition to carriage itself, embarking and disembarking operations.

1991, c. 64, s. 2036.

2037. The carrier is bound to take his passengers safe and sound to their destination.

The carrier is liable for injury suffered by a passenger unless he proves it was caused by superior force or by the state of health or fault of the passenger. He is also liable where the injury is caused by his state of health or that of one of his servants or by the condition or working of the vehicle.

1991, c. 64, s. 2037.

2038. The carrier is liable for any loss of the luggage or other effects placed in his care by a passenger, unless he proves superior force, an inherent defect in the property or the fault of the passenger.

However, the carrier is not liable for any loss of documents, money or other property of great value, unless he agreed to carry the property after its nature or value was declared to him; moreover, the carrier is not liable for any loss of hand luggage or other effects which remain in the care of the passenger, unless the passenger proves the fault of the carrier.

1991, c. 64, s. 2038.

2039. In the case of successive or combined carriage of persons, the carrier who effects the carriage during which the injury occurs is liable therefor, unless one of the carriers has, by express stipulation, assumed liability for the entire journey.

1991, c. 64, s. 2039.

§3. — Carriage of property

2040. Carriage of property extends from the time the carrier receives the property into his charge for carriage until its delivery.

1991, c. 64, s. 2040.

2041. A bill of lading is a writing which evidences a contract for the carriage of property.

A bill of lading states the names of the shipper, receiver and carrier and, where applicable, of the person who is to pay the freight and carriage charges. It also states the place and date

of receipt of the property by the carrier into his charge, the points of origin and destination, the freight as well as the nature, quantity, volume or weight, and apparent condition of the property and any dangerous properties it may have.

1991, c. 64, s. 2041.

2042. The bill of lading is issued in several copies; the issuing carrier keeps a copy and gives one to the shipper; another copy accompanies the property to its destination.

In the absence of any evidence to the contrary, the bill of lading is proof of the receipt of the property by the carrier into his charge and of its nature, quantity and apparent condition.

1991, c. 64, s. 2042.

2043. A bill of lading is not negotiable, unless otherwise provided by law or by the contract.

Negotiation of a negotiable bill of lading is effected by endorsement and delivery, or by mere delivery if the bill is made to bearer.

1991, c. 64, s. 2043.

2044. The carrier is bound to deliver the property to the receiver or to the holder of the bill of lading.

The holder of a bill of lading shall hand it over to the carrier when he demands delivery of the property.

1991, c. 64, s. 2044.

2045. Subject to the rights of the shipper, the receiver upon accepting the property or the contract acquires the rights and assumes the obligations arising out of the contract.

1991, c. 64, s. 2045.

2046. The carrier is bound to notify the receiver of the arrival of the property and of the time allowed to remove it, unless it is delivered to the receiver's residence or premises.

1991, c. 64, s. 2046.

2047. Where the receiver cannot be found or refuses or neglects to take delivery of the property or where, for any other reason, the carrier cannot deliver the property through no fault of his own, the carrier shall notify the shipper without delay and request instructions as to disposal of the property; in an emergency, however, the carrier may dispose of perishable property without notice.

If the carrier receives no instructions within fifteen days of notification, he may return the property to the shipper at the shipper's expense or dispose of it in accordance with the rules contained in Book Four on Property concerning the holder of property entrusted and

forgotten.

1991, c. 64, s. 2047.

2048. From the expiry of the time allowed for removal or from notification of the shipper, the obligations of the carrier are those of a gratuitous depositary; he is entitled, however, to reasonable remuneration for the preservation and storage of the property, payable by the receiver or, failing him, by the shipper.

1991, c. 64, s. 2048.

2049. The carrier is bound to carry the property to its destination.

He is liable for any injury resulting from the carriage, unless he proves that the loss was caused by superior force, an inherent defect in the property or natural shrinkage.

1991, c. 64, s. 2049.

2050. Prescription of any action in damages against a carrier runs from the delivery of the property or from the date on which it should have been delivered.

The action is not admissible unless a notice of the claim is priorly given to the carrier in writing within sixty days after the delivery of the property, whether or not the loss is apparent, or if the property is not delivered, within nine months after the date on which it was sent. No notice is required if the action is brought within that time.

1991, c. 64, s. 2050.

2051. In the case of successive or combined carriage of property, an action in liability may be brought against the carrier with whom the contract was made or the last carrier.

1991, c. 64, s. 2051.

2052. The liability of the carrier, in the case of loss, may not exceed the value of the property declared by the shipper.

If no value has been declared, it is established on the basis of the value of the property at the place and time of shipment.

1991, c. 64, s. 2052.

2053. No carrier is bound to carry documents, money or property of great value.

If a carrier agrees to carry that type of property, he is not liable for loss unless its nature or value has been declared to him; any declaration which is deliberately misleading as to the nature of the property or deliberately inflates its value exempts the carrier from all liability.

1991, c. 64, s. 2053.

2054. A shipper who places dangerous property into the charge of a carrier without prior disclosure of its exact nature shall indemnify the carrier for any loss he suffers by reason of carriage of the property.

Moreover, the shipper shall pay any storage charges and assume all risks.

1991, c. 64, s. 2054.

2055. The shipper is bound to compensate any loss suffered by the carrier as a result of an inherent defect in the property or any omission, deficiency or inaccuracy in the shipper's declarations as to the property carried.

However, the carrier remains liable towards third persons who suffer loss as a result of any of these acts or omissions, subject to his remedy against the shipper.

1991, c. 64, s. 2055.

2056. The freight and carriage charges are payable before delivery, unless otherwise stipulated in the bill of lading.

In either case, if the property is not as described in the contract or if its value is greater than the declared amount, the carrier may claim the amount he could have charged for its carriage.

1991, c. 64, s. 2056.

2057. Where the price of the property carried is payable on delivery, the carrier shall not deliver the property until he receives payment.

The shipper pays the charges unless he has instructed otherwise on the bill of lading.

1991, c. 64, s. 2057.

2058. The carrier may retain the property carried until the freight, the carriage charges and any reasonable storage charges are paid.

If, according to the shipper's instructions, those amounts are payable by the receiver and the carrier does not demand payment according to instructions, he loses his right to claim payment from the shipper.

1991, c. 64, s. 2058.

SECTION II

SPECIAL RULES GOVERNING CARRIAGE OF PROPERTY BY WATER

§1. — General provisions

2059. Unless otherwise agreed by the parties, this section applies to carriage of property by water where the ports of sailing and of destination are situated in Québec.

1991, c. 64, s. 2059.

2060. Carriage of property extends from the time the carrier receives the property into his charge until its delivery.

1991, c. 64, s. 2060.

§2. — *Obligations of parties*

2061. Freight is payable by the shipper.

Freight is also payable by the receiver where he takes delivery of property in respect of which freight is payable on arrival.

1991, c. 64, s. 2061.

2062. The shipper shall present the property at the time and place fixed by agreement between the parties or according to the custom of the port of loading, failing which he shall pay to the carrier an indemnity equal to the loss he suffers, but in no case greater than the amount of the freight.

1991, c. 64, s. 2062.

2063. At the beginning of the voyage and even before, the carrier is bound to exercise diligence to make the ship seaworthy, properly man, equip and supply it, and make fit and safe all parts of the ship where property is to be loaded and kept during the voyage.

1991, c. 64, s. 2063.

2064. The carrier is bound to proceed in an appropriate manner with the loading, handling, stowing, carrying, keeping and discharging of the property carried.

Except in the coasting trade, a fault is committed by the carrier if, without the consent of the shipper and in the absence of rules or custom so permitting, he stows the property on deck. Consent is presumed where containers are loaded on a ship fitted for the carriage of containers.

1991, c. 64, s. 2064.

2065. The carrier shall issue to the shipper, at his request, a bill of lading based on the declarations of the shipper.

In addition to the usual particulars, such a bill of lading contains entries allowing the property to be carried to be clearly identified, including the leading marks appearing on it, and any relevant information.

The carrier may refuse to include in the bill of lading any particular whose accuracy he has serious reason to suspect or which he has had no means of verifying.

1991, c. 64, s. 2065; 2002, c. 19, s. 15.

2066. The shipper is warrantor for the accuracy of his declarations at the time of shipment and is liable for any injury the carrier may suffer as a result of inaccuracies in his declarations.

The carrier may exercise his rights under this article against no person other than the shipper.

1991, c. 64, s. 2066.

2067. Where the nature or value of the property is knowingly misstated by the shipper, the carrier is not liable for any loss.

1991, c. 64, s. 2067.

2068. Removal of the property creates a presumption of delivery of the property to the receiver in the condition indicated in the bill of lading or, failing such an indication, in its condition at the time of shipment, unless the receiver gives notice in writing to the carrier or his representative at the port of discharge, of any loss of the property, not later than upon removal or, if the loss is not apparent, not later than three days after removal.

The carrier and the receiver may, at the time of removal, require a statement as to the condition of the property.

1991, c. 64, s. 2068.

2069. In the case of any actual or apprehended loss of the property, the carrier and the receiver are bound to give each other facilities for inspecting and tallying the items of property.

1991, c. 64, s. 2069.

2070. Any stipulation in a contract whereby the carrier or the lessor is relieved from the obligation to make reparation for injury resulting from the loss sustained by the property carried, except in the case of carriage of live animals or property stowed on deck other than containers loaded on a ship fitted for the carriage of containers, is null.

Any clause assigning the benefit of insurance to the carrier or any similar clause is considered to be a stipulation relieving the carrier from liability.

1991, c. 64, s. 2070.

2071. The carrier is liable for any loss sustained by the property from the time he receives it into his charge until delivery.

He is liable, in particular, for any loss resulting from unseaworthiness unless he proves that he exercised diligence to make the ship seaworthy.

1991, c. 64, s. 2071.

2072. The carrier is not liable for any loss of the property resulting from

- (1) fault in the navigation and management of the ship by the master, pilot or other servants of the carrier;
- (2) fire, unless caused by an act or the fault of the carrier;
- (3) superior force;
- (4) fault of the owner of the property or shipper, particularly in packing, packaging or marking the property;
- (5) an inherent defect in the property or natural shrinkage;
- (6) an act or attempt to save life or property in the course of a carriage or a deviation for that purpose.

1991, c. 64, s. 2072.

2073. The shipper is not liable for any injury suffered by the carrier or for any damage caused to the ship, if it is not due to his fault or that of his servants.

1991, c. 64, s. 2073.

2074. The carrier is liable for any loss of the property carried up to the sum fixed by government regulation, unless a higher indemnity has been fixed by agreement between him and the shipper.

He may be held liable beyond the amount fixed by regulation if he committed fraud or if the nature and value of the property were declared by the shipper before shipment and the declaration was attached to the bill of lading. The shipper's declaration is binding on the carrier, saving his right to make proof to the contrary.

1991, c. 64, s. 2074.

2075. No freight is payable in respect of property lost by reason of perils of the sea or the carrier's neglect to make the ship seaworthy.

1991, c. 64, s. 2075.

2076. The carrier may land, destroy or render innocuous any dangerous property if he would not have consented to its shipment had he been aware of its nature or properties.

The shipper of such property is liable for any injury resulting from its shipment and for any expense incurred by the carrier to dispose of it or render it innocuous.

1991, c. 64, s. 2076.

2077. Where dangerous property shipped with the knowledge and consent of the carrier becomes a danger to the ship or cargo, it may be landed, destroyed or rendered innocuous by the carrier without any liability on his part except by way of general average, if any.

1991, c. 64, s. 2077.

2078. The contract is resolved with no claim for damages on either part if, by reason of superior force, the sailing of the ship which was to effect the carriage is prevented or so delayed that carriage can no longer be effected usefully for the shipper and without the risk of his incurring liability to the carrier.

1991, c. 64, s. 2078.

2079. Any action against the carrier, shipper or receiver under a contract of carriage is prescribed one year after the delivery of the property or, in the case of total loss, one year after the date it should have been delivered.

1991, c. 64, s. 2079.

§3. — *Handling of property*

2080. The handling contractor is in charge of all loading and discharging operations, including all necessary operations prior and subsequent to loading and discharge.

For the purposes of his activities, the handling contractor is presumed to have received the property as declared by the depositor.

1991, c. 64, s. 2080.

2081. The handling contractor acts on behalf of the person who hired his services and is liable only to that person, who alone has an action against him.

1991, c. 64, s. 2081.

2082. The handling contractor may be called upon to receive, tally and keep property on land until loading, on behalf of the carrier, shipper or receiver; he may likewise be called upon to receive, tally and keep property on land after its discharge as well as to deliver it.

These additional services are due if they have been agreed or if they are consistent with the custom of the port.

1991, c. 64, s. 2082.

2083. The handling contractor may be exonerated from liability for any loss of property for the same reasons as the carrier; however, the plaintiff may in those cases establish that the loss is due to the fault of the handling contractor or his servants.

The liability of the handling contractor may not exceed the sum fixed by government regulation, unless he committed fraud or has been notified of a declaration of the value of the property.

1991, c. 64, s.2083 .

2084. No clause for the purpose or to the effect of relieving the handling contractor from liability, shifting the burden of proof to the other party, limiting his liability to a sum lower than that fixed by regulation or assigning the benefit of insurance to him may be set up against the shipper or the receiver.

1991, c. 64, s. 2084.

CHAPTER VII

CONTRACT OF EMPLOYMENT

2085. A contract of employment is a contract by which a person, the employee, undertakes for a limited period to do work for remuneration, according to the instructions and under the direction or control of another person, the employer.

1991, c. 64, s. 2085.

2086. A contract of employment is for a fixed term or an indeterminate term.

1991, c. 64, s. 2086.

2087. The employer is bound not only to allow the performance of the work agreed upon and to pay the remuneration fixed, but also to take any measures consistent with the nature of the work to protect the health, safety and dignity of the employee.

1991, c. 64, s. 2087.

2088. The employee is bound not only to carry on his work with prudence and diligence, but also to act faithfully and honestly and not to use any confidential information he may obtain in carrying on or in the course of his work.

These obligations continue for a reasonable time after cessation of the contract, and permanently where the information concerns the reputation and private life of another person.

1991, c. 64, s. 2088.

2089. The parties may stipulate in writing and in express terms that, even after the

termination of the contract, the employee may neither compete with his employer nor participate in any capacity whatsoever in an enterprise which would then compete with him.

Such a stipulation shall be limited, however, as to time, place and type of employment, to whatever is necessary for the protection of the legitimate interests of the employer.

The burden of proof that the stipulation is valid is on the employer.

1991, c. 64, s.2089.

2090. A contract of employment is tacitly renewed for an indeterminate term where the employee continues to carry on his work for five days after the expiry of the term, without objection from the employer.

1991, c. 64, s. 2090.

2091. Either party to a contract with an indeterminate term may terminate it by giving notice of termination to the other party.

The notice of termination shall be given in reasonable time, taking into account, in particular, the nature of the employment, the special circumstances in which it is carried on and the duration of the period of work.

1991, c. 64, s. 2091.

2092. The employee may not renounce his right to obtain compensation for any injury he suffers where insufficient notice of termination is given or where the manner of resiliation is abusive.

1991, c. 64, s. 2092.

2093. A contract of employment terminates upon the death of the employee.

Depending on the circumstances, it may also terminate upon the death of the employer.

1991, c. 64, s. 2093.

2094. One of the parties may, for a serious reason, unilaterally resiliate the contract of employment without prior notice.

1991, c. 64, s. 2094.

2095. An employer may not avail himself of a stipulation of non-competition if he has resiliated the contract without a serious reason or if he has himself given the employee such a reason for resiliating the contract.

1991, c. 64, s. 2095.

2096. Upon termination of the contract, the employer shall furnish to the employee, at his

request, a certificate of employment, showing only the nature and duration of the employment and indicating the identities of the parties.

1991, c. 64, s. 2096.

2097. A contract of employment is not terminated by alienation of the enterprise or any change in its legal structure by way of amalgamation or otherwise.

The contract is binding on the successor of the employer.

1991, c. 64, s. 2097; 2002, c. 19, s. 15.

CHAPTER VIII

CONTRACT OF ENTERPRISE OR FOR SERVICES

SECTION I

NATURE AND SCOPE OF THE CONTRACT

2098. A contract of enterprise or for services is a contract by which a person, the contractor or the provider of services, as the case may be, undertakes to carry out physical or intellectual work for another person, the client or to provide a service, for a price which the client binds himself to pay.

1991, c. 64, s. 2098.

2099. The contractor or the provider of services is free to choose the means of performing the contract and no relationship of subordination exists between the contractor or the provider of services and the client in respect of such performance.

1991, c. 64, s. 2099.

2100. The contractor and the provider of services are bound to act in the best interests of their client, with prudence and diligence. Depending on the nature of the work to be carried out or the service to be provided, they are also bound to act in accordance with usual practice and the rules of art, and, where applicable, to ensure that the work done or service provided is in conformity with the contract.

Where they are bound to produce results, they may not be relieved from liability except by proving superior force.

1991, c. 64, s. 2100.

SECTION II

RIGHTS AND OBLIGATIONS OF THE PARTIES

§1. — *General provisions applicable to both services and works*

2101. Unless a contract has been entered into specifically in view of his personal qualities or unless the very nature of the contract prevents it, the contractor or the provider of services may employ a third person to perform the contract, but its performance remains under his supervision and responsibility.

1991, c. 64, s. 2101.

2102. Before the contract is entered into, the contractor or the provider of services is bound to provide the client, as far as circumstances permit, with any useful information concerning the nature of the task which he undertakes to perform and the property and time required for that task.

1991, c. 64, s. 2102.

2103. The contractor or the provider of services furnishes the property necessary for the performance of the contract, unless the parties have stipulated that only his work is required.

He shall furnish only property of good quality; he is bound by the same warranties in respect of the property as a seller.

A contract is a contract of sale, and not a contract of enterprise or for services, where the work or service is merely accessory to the value of the property supplied.

1991, c. 64, s. 2103.

2104. Where the property is provided by the client, the contractor or the provider of services is bound to use it with care and to account for its use; where the property is evidently unfit for its intended use or where it has an apparent or latent defect of which the contractor or the provider of services should be aware, he is bound to inform the client immediately, failing which he is liable for any injury which may result from the use of the property.

1991, c. 64, s. 2104.

2105. If the property necessary for the performance of the contract perishes by superior force, the party that furnished it bears the loss.

1991, c. 64, s. 2105.

2106. The price of the work or services is fixed by the contract, by usage or by law or on the basis of the value of the work carried out or the services rendered.

1991, c. 64, s. 2106.

2107. Where the price of the work or services is estimated at the time the contract is entered into, the contractor or the provider of the services shall give the reasons for any increase of the price.

The client is bound to pay such increase only to the extent that it results from work, services or expenses that the contractor or the provider of services could not foresee at the time the contract was entered into.

1991, c. 64, s. 2107.

2108. Where the price is fixed according to the value of the work performed, the services rendered or the property furnished, the contractor or the provider of services is bound, at the request of the client, to give him an account of the progress of the work or of the services rendered and expenses incurred so far.

1991, c. 64, s. 2108.

2109. Where the price is fixed by the contract, the client shall pay the price agreed, and may not claim a reduction of the price on the ground that the work or service required less effort or cost less than had been foreseen.

Similarly, the contractor or the provider of services may not claim an increase of the price for the opposite reason.

Unless otherwise agreed by the parties, the price fixed by the contract remains unchanged notwithstanding any modification of the original terms and conditions of performance.

1991, c. 64, s. 2109.

§2. — *Special provisions respecting works*

I — General provisions

2110. The client is bound to accept the work when work is completed; work is completed when the work has been produced and is ready to be used for its intended purpose.

Acceptance of the work is the act by which the client declares that he accepts it, with or without reservation.

1991, c. 64, s. 2110.

2111. The client is not bound to pay the price before the work is accepted.

At the time of payment, the client may deduct from the price, until the repairs or corrections are made to the work, a sufficient amount to meet the reservations which he made as to the apparent defects or poor workmanship that existed when he accepted the work.

The client may not exercise this right if the contractor furnishes him with sufficient security to guarantee the performance of his obligations.

1991, c. 64, s. 2111.

2112. If the parties do not agree on the amount to be deducted and on the work to be completed, an assessment is made by an expert designated by the parties or, failing that, by the court.

1991, c. 64, s. 2112.

2113. A client who accepts without reservation retains his right to pursue his remedies against the contractor in cases of nonapparent defects or nonapparent poor workmanship.

1991, c. 64, s. 2113.

2114. Where the work is performed in successive phases, it may be accepted in parts; the price for each part is payable upon delivery and acceptance of the part; payment creates a presumption that the part has been accepted, unless the sums paid are to be considered as merely partial payments on the price.

1991, c. 64, s. 2114.

2115. The contractor is liable for loss of the work occurring before its delivery, unless it is due to the fault of the client or the client is in default to receive the work.

Where the property is furnished by the client, the contractor is not liable for the loss of the work unless it is due to his fault or some other failure on his part. He may not claim the price of his work except where the loss of the work results from an inherent defect in the property furnished or a defect in the property that he was unable to detect, or where the loss is due to the fault of the client.

1991, c. 64, s. 2115.

2116. The prescription of rights to pursue remedies between the parties begins to run only from the time that work is completed, even in respect of work that was subject to reservations at the time of acceptance of the work.

1991, c. 64, s. 2116.

II — Immovable works

2117. At any time during the construction or renovation of an immovable, the client, provided he does not interfere with the work, may examine the progress of the work, the quality of the materials used and of the work performed, and the statement of expenses incurred so far.

1991, c. 64, s. 2117.

2118. Unless they can be relieved from liability, the contractor, the architect and the engineer who, as the case may be, directed or supervised the work, and the subcontractor with respect to work performed by him, are solidarily liable for the loss of the work occurring within five years after the work was completed, whether the loss results from

faulty design, construction or production of the work, or the unfavourable nature of the ground.

1991, c. 64, s. 2118.

2119. The architect or the engineer may be relieved from liability only by proving that the defects in the work or in the part of it completed do not result from any erroneous or faulty expert opinion or plan he may have submitted or from any failure to direct or supervise the work.

The contractor may be relieved from liability only by proving that the defects result from an erroneous or faulty expert opinion or plan of the architect or engineer selected by the client. The subcontractor may be relieved from liability only by proving that the defects result from decisions made by the contractor or from the expert opinions or plans furnished by the architect or engineer.

They may, in addition, be relieved from liability by proving that the defects result from decisions imposed by the client in selecting the land or materials, or the subcontractors, experts, or construction methods.

1991, c. 64, s. 2119.

2120. The contractor, the architect and the engineer, in respect of work they directed or supervised, and, where applicable, the subcontractor, in respect of work he performed, are jointly liable to warrant the work for one year against poor workmanship existing at the time of acceptance or discovered within one year after acceptance.

1991, c. 64, s. 2120; 2002, c. 19, s. 15.

2121. An architect or an engineer who does not direct or supervise work is liable only for the loss occasioned by a defect or error in the plans or in the expert opinions furnished by him.

1991, c. 64, s. 2121.

2122. During the performance of the work, the contractor may, if so provided in the agreement, require partial payments on the price of the contract for the value of the work performed and of the materials needed to produce the work; before doing so, he is bound to furnish the client with a statement of the amounts paid to the subcontractors, to the persons having supplied the materials and to any other person having participated in the work, and of the amounts he still owes them for the completion of the work.

1991, c. 64, s. 2122.

2123. At the time of payment, the client may deduct from the price of the contract an amount sufficient to pay the claims of the workman, and those of other persons who may exercise a legal hypothec on the immovable work and who have given him notice of their contract with the contractor in respect of the work performed or the materials or services supplied after such notice was given.

The deduction is valid until such time as the contractor gives the client an acquittance of such claims.

The client may not exercise the right set out in the first paragraph if the contractor furnishes him with sufficient security to guarantee the claims.

1991, c. 64, s. 2123.

2124. For the purposes of this chapter, the promoter of an immovable who sells the work which he has built or caused to be built, even after its completion, is deemed to be a contractor.

1991, c. 64, s. 2124; 1992, c. 57, s. 716.

SECTION III

RESILIATION OF THE CONTRACT

2125. The client may unilaterally resiliate the contract even though the work or provision of service is already in progress.

1991, c. 64, s. 2125.

2126. The contractor or the provider of services may not resiliate the contract unilaterally except for a serious reason, and never at an inopportune moment; otherwise, he is liable for any injury caused to the client as a result of the resiliation.

Where the contractor or the provider of services resiliates the contract, he is bound to do all that is immediately necessary to prevent any loss.

1991, c. 64, s. 2126.

2127. The death of the client does not terminate the contract unless its performance thereby becomes impossible or useless.

1991, c. 64, s. 2127.

2128. The contract is not terminated by the death or incapacity of the contractor or the provider of services unless it has been entered into specifically in view of his personal qualifications or cannot be adequately continued by his successor in his professional activities, in which case the client may resiliate it.

1991, c. 64, s. 2128.

2129. Upon resiliation of the contract, the client is bound to pay to the contractor or the provider of services, in proportion to the agreed price, the actual costs and expenses, the value of the work performed before the end of the contract or before the notice of resiliation and, as the case may be, the value of the property furnished, where it can be returned to him

and used by him.

For his part, the contractor or the provider of services is bound to repay any advances he has received in excess of what he has earned.

In either case, each party is liable for any other injury that the other party may have suffered.

1991, c. 64, s. 2129.

CHAPTER IX

MANDATE

SECTION I

NATURE AND SCOPE OF MANDATE

2130. Mandate is a contract by which a person, the mandator, empowers another person, the mandatary, to represent him in the performance of a juridical act with a third person, and the mandatary, by his acceptance, binds himself to exercise the power.

The power and, where applicable, the writing evidencing it are called the power of attorney.

1991, c. 64, s. 2130.

2131. The object of the mandate may also be the performance of acts intended to ensure the personal protection of the mandator, the administration, in whole or in part, of his patrimony as well as his moral and material well-being, should he become incapable of taking care of himself or administering his property.

1991, c. 64, s. 2131; 2002, c. 19, s. 15.

2132. Acceptance of a mandate may be express or tacit. Tacit acceptance may be inferred from the acts and even from the silence of the mandatary.

1991, c. 64, s. 2132.

2133. Mandate is either by gratuitous title or by onerous title. A mandate entered into between two natural persons is presumed to be by gratuitous title but a professional mandate is presumed to be given by onerous title.

1991, c. 64, s. 2133.

2134. Remuneration, if any, is determined by the contract, usage or law or on the basis of the value of the services rendered.

1991, c. 64, s. 2134.

2135. A mandate may be special, namely for a particular business, or general, namely for

all the business of the mandator.

A mandate expressed in general terms confers the power to perform acts of simple administration only. The power to perform other acts is conferred only by express mandate, except where, in the case of a mandate given in anticipation of the mandator's incapacity, that mandate confers full administration.

1991, c. 64, s. 2135.

2136. The powers of a mandatary extend not only to what is expressed in the mandate, but also to anything that may be inferred therefrom. The mandatary may carry out all acts which are incidental to such powers and which are necessary for the performance of the mandate.

1991, c. 64, s. 2136.

2137. Powers granted to persons to perform an act which is an ordinary part of their profession or calling or which may be inferred from the nature of such profession or calling, need not be mentioned expressly.

1991, c. 64, s. 2137.

SECTION II

OBLIGATIONS BETWEEN PARTIES

§1. — Obligations of the mandatary towards the mandator

2138. A mandatary is bound to fulfill the mandate he has accepted, and he shall act with prudence and diligence in performing it.

He shall also act honestly and faithfully in the best interests of the mandator, and avoid placing himself in a position that puts his own interest in conflict with that of his mandator.

1991, c. 64, s. 2138.

2139. During the mandate, the mandatary is bound to inform the mandator, at his request or where circumstances warrant it, of the stage reached in the performance of the mandate.

The mandatary shall inform the mandator without delay that he has fulfilled his mandate.

1991, c. 64, s. 2139.

2140. The mandatary is bound to fulfill the mandate in person unless he is authorized by the mandator to appoint another person to perform all or part of it in his place.

If the interests of the mandator so require, however, the mandatary shall appoint a third person to replace him where unforeseen circumstances prevent him from fulfilling the mandate and he is unable to inform the mandator thereof in due time.

1991, c. 64, s. 2140.

2141. The mandatary is accountable for the acts of the person he has appointed without authorization as his substitute as if he had performed them in person; where he was authorized to make such an appointment, he is accountable only for the care with which he selected his substitute and gave him instructions.

In any case, the mandator has a direct action against the person appointed by the mandatary as his substitute.

1991, c. 64, s. 2141.

2142. In the performance of the mandate, the mandatary, unless prohibited by the mandator or usage, may require the assistance of another person and delegate powers to him for that purpose.

The mandatary remains liable towards the mandator for the acts of the person assisting him.

1991, c. 64, s. 2142.

2143. A mandatary who agrees to represent, in the same act, persons whose interests conflict or could conflict shall so inform each of the mandators, unless he is exempted by usage or the fact that each of the mandators is aware of the double mandate; he shall act impartially towards each of them.

Where a mandator was not in a position to know of the double mandate, he may have the act of the mandatary declared null if he suffers injury as a result.

1991, c. 64, s. 2143.

2144. Where several mandataries are appointed in respect of the same business, the mandate has effect only if it is accepted by all of them.

The mandataries shall act jointly for all acts contemplated in the mandate, unless otherwise stipulated or implied by the mandate. They are solidarily liable for the performance of their obligations.

1991, c. 64, s. 2144.

2145. A mandatary who exercises alone powers that his mandate requires him to exercise with another person exceeds his powers, unless he exercises them more advantageously for the mandator than agreed.

1991, c. 64, s. 2145.

2146. The mandatary may not use for his benefit any information he obtains or any property he is charged with receiving or administering in carrying out his mandate, unless the mandator consents to such use or such use arises from the law or the mandate.

If the mandatary uses the property or information without authorization, he shall, in addition to the compensation for which he may be liable for injury suffered, compensate the mandator by paying, in the case of information, an amount equal to the enrichment he obtains or, in the case of property, an appropriate rent or the interest on the sums used.

1991, c. 64, s. 2146.

2147. The mandatary may not, even through an intermediary, become a party to an act which he has agreed to perform for his mandator, unless the mandator authorizes it or is aware of his quality as a contracting party.

Only the mandator may avail himself of the nullity resulting from the violation of this rule.

1991, c. 64, s. 2147.

2148. Where the mandate is by gratuitous title, the court may, after assessing the extent of the mandatary's liability, reduce the amount of damages for which he is liable.

1991, c. 64, s. 2148.

§2. — *Obligations of the mandator towards the mandatary*

2149. The mandator is bound to cooperate with the mandatary to facilitate the fulfilment of the mandate.

1991, c. 64, s. 2149.

2150. Where required, the mandator advances to the mandatary the necessary sums for the performance of the mandate. He reimburses the mandatary for any reasonable expenses he has incurred and pays him the remuneration to which he is entitled.

1991, c. 64, s. 2150.

2151. The mandator owes interest on expenses incurred by the mandatary in the performance of his mandate from the day they are disbursed.

1991, c. 64, s. 2151.

2152. The mandator is bound to discharge the mandatary from the obligations he has contracted towards third persons within the limits of the mandate.

The mandator is not liable to the mandatary for any act which exceeds the limits of the mandate. He is fully liable, however, if he ratifies such act or if the mandatary, at the time he acted, was unaware that the mandate had terminated.

1991, c. 64, s. 2152.

2153. The mandator is presumed to have ratified an act which exceeds the limits of the

mandate where the act has been performed more advantageously for him than he had indicated.

1991, c. 64, s. 2153.

2154. Where the mandatary is not at fault, the mandator is bound to compensate him for any injury he has suffered by reason of the performance of the mandate.

1991, c. 64, s. 2154.

2155. If no fault is imputable to the mandatary, the sums owed to him are payable even though the business has not been successfully concluded.

1991, c. 64, s. 2155.

2156. If a mandate is given by several persons, their obligations towards the mandatary are solidary.

1991, c. 64, s. 2156.

SECTION III

OBLIGATIONS OF PARTIES TOWARDS THIRD PERSONS

§1. — Obligations of the mandatary towards third persons

2157. Where a mandatary binds himself, within the limits of his mandate, in the name and on behalf of the mandator, he is not personally liable to the third person with whom he contracts.

The mandatary is liable to the third person if he acts in his own name, subject to any rights the third person may have against the mandator.

1991, c. 64, s. 2157.

2158. Where a mandatary exceeds his powers, he is personally liable to the third person with whom he contracts, unless the third person was sufficiently aware of the mandate, or unless the mandator has ratified the acts performed by the mandatary.

1991, c. 64, s. 2158.

2159. Where the mandatary agrees with a third person to disclose the identity of his mandator within a fixed period and fails to do so, he is personally liable.

The mandatary is also personally liable if he is bound to conceal the name of the mandator or if he knows that the person whose identity he discloses is insolvent, is a minor or is under protective supervision and he fails to mention this fact.

1991, c. 64, s. 2159.

§2. — *Obligations of the mandator towards third persons*

2160. A mandator is liable to third persons for the acts performed by the mandatary in the performance and within the limits of his mandate unless, under the agreement or by virtue of usage, the mandatary alone is liable.

The mandator is also liable for any acts which exceed the limits of the mandate, if he has ratified them.

1991, c. 64, s. 2160.

2161. The mandator may repudiate the acts of the person appointed by the mandatary as his substitute if he suffers any injury thereby, where the appointment was made without his authorization or where his interest or the circumstances did not warrant the appointment.

1991, c. 64, s. 2161.

2162. The mandator or, upon his death, his heirs are liable to third persons for acts done by the mandatary in the performance and within the limits of the mandate after the termination of the mandate, where the acts were the necessary consequence of those already performed or could not be deferred without risk of loss, or where the third person was unaware of the termination of the mandate.

1991, c. 64, s. 2162.

2163. A person who has allowed it to be believed that a person was his mandatary is liable, as if he were his mandatary, to the third person who has contracted in good faith with the latter, unless, in circumstances in which the error was foreseeable, he has taken appropriate measures to prevent it.

1991, c. 64, s. 2163.

2164. A mandator is liable for any injury caused by the fault of the mandatary in the performance of his mandate unless he proves, where the mandatary was not his servant, that he could not have prevented the injury.

1991, c. 64, s. 2164.

2165. A mandator, after disclosing to a third person the mandate he had given, may take action directly against the third person for the performance of the obligations he contracted towards the mandatary, who was acting in his own name. However, the third person may plead the inconsistency of the mandate with the stipulations or nature of his contract and the defenses which can be set up against the mandator and the mandatary, respectively.

If proceedings have already been instituted against the third person by the mandatary, the mandator may exercise his right only by intervening in the proceedings.

1991, c. 64, s. 2165.

SECTION IV

SPECIAL RULES GOVERNING THE MANDATE GIVEN IN ANTICIPATION OF THE MANDATOR'S INCAPACITY

2166. A mandate given by a person of full age in anticipation of his incapacity to take care of himself or to administer his property is made by a notarial act *en minute* or in the presence of witnesses.

The performance of the mandate is subordinate to the occurrence of the incapacity and to homologation by the court, at the request of the mandatary designated in the act.

1991, c. 64, s. 2166.

2167. A mandate given in the presence of witnesses is written by the mandator or by a third person.

The mandator, in the presence of two witnesses who have no interest in the act and who are in a position to ascertain whether he is capable of acting, declares the nature of the act but need not disclose its contents. The mandator signs the act at the end or, if he has already signed it, recognizes his signature; he may also have a third person sign the writing for him in his presence and according to his instructions. The witnesses sign the mandate forthwith in the presence of the mandator.

1991, c. 64, s. 2167.

2167.1. During homologation proceedings or even before if a request for homologation is imminent and it is necessary to act to prevent serious harm to the mandator, the court may issue any order it considers necessary to ensure the personal protection of the mandator, his representation in the exercise of civil rights or the administration of his property.

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

2002, c. 19, s. 9.

2168. Where the scope of the mandate is in doubt, the mandatary interprets it according to the rules respecting tutorship to persons of full age.

If any notice, consent or authorization is then required pursuant to the rules respecting the administration of the property of others, the mandatary may obtain it from the Public Curator or from the court.

1991, c. 64, s. 2168.

2169. Where the mandate is not such as to fully ensure the care of the person or the administration of his property, protective supervision may be instituted to complete it; the

mandatary then proceeds to carry out the mandate and makes a report, on application and at least once each year, to the tutor or curator. At the end of the mandate, he renders an account to the tutor or curator.

The mandatary is bound by such obligations only with respect to the tutor or curator to the person. If the protection of the person is assumed by the mandatary himself, the tutor or curator to property is bound by the same obligations towards the mandatary.

1991, c. 64, s. 2168.

2170. Acts performed before the homologation of the mandate may be annulled or the resulting obligations may be reduced, on the mere proof that the mandator's incapacity was notorious or known to the other party at the time that the acts were entered into.

1991, c. 64, s. 2170.

2171. Unless otherwise stipulated in the mandate, the mandatary is authorized to perform, to his benefit, the obligations of the mandator provided in articles 2150 to 2152 and 2154.

1991, c. 64, s. 2171.

2172. The mandate ceases to have effect when the court ascertains that the mandator has again become capable; the mandator may then revoke his mandate if he considers it appropriate to do so.

1991, c. 64, s. 2172.

2173. If the director general of the health and social services establishment which provides care or services to the mandator ascertains that the mandator has again become capable, he shall attest to such capacity in a report filed in the office of the court. Such a report includes the medical and psychosocial assessment.

The clerk informs the mandatary, the mandator and the persons qualified to intervene in an application for the institution of protective supervision that the report has been filed. If no objection is made within thirty days, the court is presumed to have found that the mandator has again become capable, and the clerk shall, without delay, transmit a notice of cessation of the effects of the mandate to the mandator, the mandatary and the Public Curator.

1991, c. 64, s. 2173.

2174. The mandatary may not, notwithstanding any provision to the contrary, renounce his mandate unless he has previously provided for his replacement if the mandate provides therefor or has applied for the institution of protective supervision in respect of the mandator.

1991, c. 64, s. 2174.

SECTION V

TERMINATION OF MANDATE

2175. In addition to the causes of extinction common to obligations, revocation of the mandate by the mandator, renunciation by the mandatary, the extinction of the power conferred on the mandatary or the death of one of the parties terminates the mandate.

The mandate is also terminated by bankruptcy, except where it was given by gratuitous title in anticipation of the mandator's incapacity; it may be terminated as well, in certain cases, by the institution of protective supervision in respect of one of the parties.

1991, c. 64, s. 2175.

2176. The mandator may revoke the mandate and compel the mandatary to return to him the power of attorney in order to make a notation therein of the termination of the mandate. The mandatary has a right to require the mandator to furnish him with a duplicate of the power of attorney containing such notation.

Where the power of attorney is made by notarial act *en minute*, the mandator makes the notation on a copy and may give notice of termination of the mandate to the depositary of the document, who, on being notified, is bound to note it on the document and on every copy of it which he issues.

1991, c. 64, s. 2176.

2177. Where the mandator is incapable, any interested person, including the Public Curator, may, if the mandate is not faithfully performed or for any other serious reason, apply to the court for the revocation of the mandate, the rendering of an account by the mandatary and the institution of protective supervision in respect of the mandator.

1991, c. 64, s. 2177.

2178. A mandatary may renounce the mandate he has accepted by so notifying the mandator. He is thereupon entitled, if the mandate was given by onerous title, to the remuneration he has earned until the day of his renunciation.

The mandatary is liable for injury caused to the mandator by his renunciation, if he submits it without a serious reason and at an inopportune moment.

1991, c. 64, s. 2178.

2179. The mandator may, for a determinate term or to ensure the performance of a special obligation, renounce his right to revoke the mandate unilaterally.

The mandatary may, in the same manner, undertake not to exercise his right of renunciation.

Unilateral revocation or renunciation by the mandator or the mandatary, as the case may be, despite his undertaking terminates the mandate.

1991, c. 64, s. 2179; 2002, c. 19, s. 10.

2180. The appointment of a new mandatary by the mandator for the same business is equivalent to revocation of the first mandatary from the day the first mandatary was notified of the new appointment.

1991, c. 64, s. 2180.

2181. A mandator who revokes a mandate remains bound to perform his obligations towards the mandatary; he is also liable for any injury caused to the mandatary as a result of a revocation made without a serious reason and at an inopportune moment.

Where notice of the revocation has been given only to the mandatary, the revocation does not affect a third person who deals with him while unaware of the revocation, without prejudice, however, to the remedy of the mandator against the mandatary.

1991, c. 64, s. 2181.

2182. Upon termination of the mandate, the mandatary is bound to do everything which is a necessary consequence of his acts or which cannot be deferred without risk of loss.

1991, c. 64, s. 2182.

2183. Upon the death of the mandatary or his being placed under protective supervision, the liquidator, tutor or curator, if aware of the mandate and able to act, is bound to notify the mandator of the death and, in respect of any business already begun, to do everything which cannot be deferred without risk of loss.

In the case of a mandate given in anticipation of the mandator's incapacity, the liquidator of the mandatary is bound, in the same circumstances, to give notice of the mandatary's death to the Public Curator.

1991, c. 64, s. 2183.

2184. Upon termination of the mandate, the mandatary is bound to render an account and return to the mandator everything he has received in the performance of his duties, even if what he has received was not due to the mandator.

The mandatary owes interest, computed from the time he is in default, on any balance in the account consisting of sums he has received.

1991, c. 64, s. 2184.

2185. A mandatary is entitled to deduct what the mandator owes him by reason of the mandate from the sums he is required to remit.

The mandatary may also retain what was entrusted to him by the mandator for the performance of the mandate until payment of the sums due to him.

1991, c. 64, s. 2185.

CHAPTER X

CONTRACTS OF PARTNERSHIP AND OF ASSOCIATION

SECTION I

GENERAL PROVISIONS

2186. A contract of partnership is a contract by which the parties, in a spirit of cooperation, agree to carry on an activity, including the operation of an enterprise, to contribute thereto by combining property, knowledge or activities and to share any resulting pecuniary profits.

A contract of association is a contract by which the parties agree to pursue a common goal other than the making of pecuniary profits to be shared between the members of the association.

1991, c. 64, s. 2186.

2187. The partnership or association is created upon the formation of the contract if no other date is indicated in the contract.

1991, c. 64, s. 2187.

2188. Partnerships are either general partnerships, limited partnerships or undeclared partnerships.

Partnerships may also be joint-stock companies, in which case they are legal persons.

1991, c. 64, s. 2188.

2189. A general or limited partnership is formed under a name that is common to the partners.

It is bound to make declarations in the manner prescribed by the legislation concerning the legal publication of partnerships; failing that, it is deemed to be an undeclared partnership, subject to the rights of third persons in good faith.

1991, c. 64, s. 2189.

2190. In every declaration of partnership, the object of the partnership shall be set forth, together with the information prescribed by the legislation concerning legal publication of partnerships, and an indication that no person other than the persons named therein is a member of the partnership.

In a declaration of limited partnership, the name and domicile of each of the known partners at the time the contract is entered into shall also be set forth, distinguishing which are general partners and which are special partners, and specifying the place where the register containing up-to-date information on the name and domicile of each special partner and all

information relating to the contributions of partners to the common stock may be consulted.

1991, c. 64, s. 2190.

2191. Where the declaration of partnership is incomplete, inaccurate or irregular, it may be rectified by a regularizing document.

1991, c. 64, s. 2191.

2192. A regularizing document that may infringe upon the rights of the partners or of third persons has no effect in their regard unless they consented to it or unless the court, after hearing the interested persons and, if necessary, amending the proposed document, has ordered that it be filed.

1991, c. 64, s. 2192.

2193. The regularizing document is deemed to be part of the declaration and to have taken effect simultaneously with it unless a later date is provided in the regularizing document or in the judgment.

1991, c. 64, s. 2193.

2194. Any change to the content of the declaration of partnership shall be set forth in an amending declaration.

1991, c. 64, s. 2194.

2195. The declaration of partnership and the amending declaration may be set up against third persons from the time they are made; they are proof of their content, in favour of third persons in good faith, until an amending declaration is made or the declaration of partnership is cancelled.

Third persons may submit any proof to refute the statements contained in a declaration.

1991, c. 64, s. 2195.

2196. If the declaration of partnership is incomplete, inaccurate or irregular or if, although a change has been made in the partnership, no amending declaration has been made, the partners are liable towards third persons for the resulting obligations of the partnership; however, special partners who are not otherwise liable for the obligations of the partnership are not liable under this article.

1991, c. 64, s. 2196.

2197. A general or limited partnership shall, in carrying on business, indicate its juridical form in its name or after its name.

Failing such indication in an act concluded by the partnership, the court, in ruling on the action of a third person in good faith, may decide that the partnership and its partners are

liable, in respect of that act, in the same manner as an undeclared partnership and its partners.

1991, c. 64, s. 2197; 2002, c. 19, s. 15.

SECTION II

GENERAL PARTNERSHIPS

§1. — *Relations of partners between themselves and with the partnership*

2198. A partner is a debtor to the partnership for everything he promises to contribute to it.

Where a person undertakes to contribute a sum of money and fails to do so, he is liable for interest from the day his contribution ought to have been made, subject to any additional damages which may be claimed from him.

1991, c. 64, s. 2198.

2199. A contribution of property is made by transferring rights of ownership or of enjoyment and by placing the property at the disposal of the partnership.

In his relations with the partnership, the person who contributes property is warrantor therefor in the same manner as a seller towards a buyer where his contribution consists in property; he is warrantor therefor in the same manner as a lessor towards a lessee, where his contribution consists in the enjoyment of property.

A contribution consisting in the enjoyment of property that would normally be required to be renewed during the term of the partnership transfers ownership of the property to the partnership, which becomes liable to return property of the same quantity, quality and value.

1991, c. 64, s. 2199.

2200. A contribution consisting in knowledge or activities is owed continuously so long as the partner who undertook to make such a contribution is a member of the partnership; the partner is liable to the partnership for any profit he realizes from the contribution.

1991, c. 64, s. 2200.

2201. Participation in the profits of a partnership entails the obligation to share in the losses.

1991, c. 64, s. 2201.

2202. The share of each partner in the assets, profits and losses is equal if it is not fixed in the contract.

If the contract fixes the share of each partner in only the assets, profits or losses, it is presumed to fix the share for all three cases.

1991, c. 64, s. 2202.

2203. Any stipulation whereby a partner is excluded from participation in the profits is without effect.

Any stipulation whereby a partner is exempt from the obligation to share in the losses may not be set up against third persons.

1991, c. 64, s. 2203.

2204. A partner may not compete with the partnership on his own account or on behalf of a third person or take part in an activity which deprives the partnership of the property, knowledge or activity he is bound to contribute to it; any profits arising from such competition belong to the partnership, without prejudice to any remedy it may pursue.

1991, c. 64, s. 2204.

2205. A partner is entitled to recover the amount of the disbursements he has made on behalf of the partnership and to be indemnified for the obligations he has contracted or the losses he has suffered in acting for the partnership if he was in good faith.

1991, c. 64, s. 2205.

2206. Where one of the partners is, on his own account, the creditor of a person who is also indebted to the partnership, and the debts are exigible to the same degree, the amounts he receives from the debtor shall be allocated to both claims in proportion to the amount of each.

1991, c. 64, s. 2206.

2207. Where a partner has been paid his full share of a debt due to the partnership, and the debtor becomes insolvent, the partner is bound to return to the partnership what he has received, even though he may have given an acquittance for his share.

1991, c. 64, s. 2207.

2208. Each partner may use the property of the partnership, provided he uses it in the interest of the partnership and according to its destination, and in such a way as not to prevent the other partners from using it as they are entitled.

Each partner may also bind the partnership in the course of its activities, but the partners may oppose the transaction before it is entered into or restrict the right of a partner to bind the partnership.

1991, c. 64, s. 2208.

2209. A partner may associate a third person with himself in his share in the partnership without the consent of the other partners, but he may not make him a member of the

partnership without their consent.

Within sixty days after becoming aware that a person who is not a member of the partnership has acquired the share of a partner by onerous title, any partner may exclude the person from the partnership by reimbursing him for the price of the share and the expenses he has paid. This right lapses one year from the acquisition of the share.

1991, c. 64, s. 2209.

2210. Where a partner transfers his share in the partnership to a partner or to the partnership or where the partnership redeems it, the value of the share, if the parties fail to agree on it, is determined by an expert designated by the parties or, failing that, by the court.

1991, c. 64, s. 2210.

2211. The share of a partner in the assets or profits of the partnership may be charged with a hypothec. However, the share of a partner in the assets may be hypothecated only with the consent of the other partners or if so provided in the contract.

1991, c. 64, s. 2211.

2212. The partners may enter into such agreements between themselves as they consider appropriate with regard to their respective powers in the management of the affairs of the partnership.

1991, c. 64, s. 2212.

2213. The partners may appoint one or more fellow partners or even a third person to manage the affairs of the partnership.

The manager, notwithstanding the opposition of the partners, may perform any act within his powers, provided he does not act fraudulently. The powers of management may not be revoked without a serious reason during the existence of the partnership, except where they were conferred by an act subsequent to the contract of partnership, in which case they may be revoked in the same manner as a simple mandate.

1991, c. 64, s. 2213.

2214. Where several persons are entrusted with the management and there is no stipulation dividing it between them nor any stipulation preventing one from acting without the others, each of them may act separately; where there is such a stipulation, however, none of them may act without the others, even where it is impossible for the others to join in the act.

1991, c. 64, s. 2214.

2215. Failing any stipulation respecting the mode of management, the partners are deemed to have conferred the power to manage the affairs of the partnership on one another.

Any act performed by a partner in respect of the common activities binds the other partners,

without prejudice to their right to object, jointly or separately, to the act before it is performed.

In addition, each partner may compel the other partners to incur any expenses necessary for the preservation of the common property but one partner may not change the condition of that property without the consent of the others, regardless of how advantageous such changes may be.

1991, c. 64, s. 2215.

2216. Every partner is entitled to participate in collective decisions, and he may not be prevented from exercising that right by the contract of partnership.

Unless otherwise stipulated in the contract, decisions are taken by the vote of a majority of the partners, regardless of the value of their interests in the partnership. However, decisions to amend the contract of partnership are taken by a unanimous vote.

1991, c. 64, s. 2216.

2217. A partner without powers of management may not alienate or otherwise dispose of common property, subject to the rights of third persons in good faith.

1991, c. 64, s. 2217.

2218. Notwithstanding any stipulation to the contrary, any partner may inform himself of the affairs of the partnership and consult its books and records even if he is excluded from management.

In exercising this right, the partner is bound not to impede the operations of the partnership unduly nor to prevent the other partners from exercising the same right.

1991, c. 64, s. 2218.

§2. — *Relations of the partnership and the partners with third persons*

2219. Each partner is a mandatary of the partnership in respect of third persons in good faith and binds the partnership for every act performed in its name in the ordinary course of its business.

No stipulation to the contrary may be set up against third persons in good faith.

1991, c. 64, s. 2219.

2220. An obligation contracted by a partner in his own name binds the partnership when it comes within the scope of the business of the partnership or when its object is property used by the partnership.

A third person, however, may cumulate the defences which may be set up against the partner and the partnership and claim that he would not have entered into the contract if he had

known that the partner was acting on behalf of the partnership.

1991, c. 64, s. 2220.

2221. In respect of third persons, the partners are jointly liable for the obligations contracted by the partnership but they are solidarily liable if the obligations have been contracted for the service or operation of an enterprise of the partnership.

Before instituting proceedings for payment against a partner, the creditors shall first discuss the property of the partnership; if proceedings are instituted, the property of the partner is not applied to the payment of creditors of the partnership until after his own creditors are paid.

1991, c. 64, s. 2221.

2222. A person who gives reason to believe that he is a partner, although he is not, may be held liable as a partner towards third persons in good faith acting in that belief.

The partnership is not liable towards third persons, however, unless it gave reason to believe that such person was a partner and it failed to take measures to prevent third persons from being mistaken in circumstances that made such a mistake predictable.

1991, c. 64, s. 2222.

2223. Silent partners are liable towards third persons for the same obligations as declared partners.

1991, c. 64, s. 2223.

2224. A partnership may not make a distribution of securities to the public or issue negotiable instruments, on pain of nullity of the contracts entered into or of the securities or instruments issued and of the obligation to compensate for any injury it causes to third persons in good faith.

In such a case, the partners are solidarily liable for the obligations of the partnership.

1991, c. 64, s. 2224.

2225. A partnership may sue and be sued in a civil action under the name it declares.

1991, c. 64, s. 2225.

§3. — *Loss of the quality of partner*

2226. A partner ceases to be a member of the partnership by the transfer or redemption of his share or upon his death, upon being placed under protective supervision or becoming bankrupt, or by the exercise of his right of withdrawal; he also ceases to be a member where such is his will, by his expulsion or by a judgment authorizing his withdrawal or ordering the seizure of his share.

1991, c. 64, s. 2226.

2227. A partner who ceases to be a member of the partnership otherwise than by the transfer or seizure of his share may obtain the value of his share upon ceasing to be a partner, and the other partners are bound to pay him the amount of the value as soon as it is established, with interest from the day on which his membership ceased.

Failing stipulations in the contract of partnership or failing agreement among the interested persons as to the value of the share, the value is determined by an expert designated by the interested persons or, failing that, by the court. The expert or the court may, however, defer the assessment of contingent assets or liabilities.

1991, c. 64, s. 2227.

2228. A partner of a partnership constituted for a term that is not fixed or whose contract of partnership reserves the right of withdrawal may withdraw from the partnership by giving it notice of his withdrawal, in good faith and not at an inopportune moment.

A partner of a partnership constituted for a term that is fixed may withdraw only with the agreement of a majority of the other partners, unless other rules for that eventuality are contained in the contract of partnership.

1991, c. 64, s. 2228.

2229. The partners may, by a majority vote, agree on the expulsion of a partner who fails to perform his obligations or hinders the carrying on of the activities of the partnership.

A partner may, in similar circumstances, apply to the court for authorization to withdraw from the partnership; the court grants such a demand unless it considers it more appropriate to order the expulsion of the partner at fault.

1991, c. 64, s. 2229.

§4. — *Dissolution and liquidation of the partnership*

2230. A partnership is dissolved by the causes of dissolution provided in the contract, by the accomplishment of its object or the impossibility of accomplishing it, or by consent of all the partners. It may also be dissolved by the court for a legitimate cause.

Liquidation of the partnership is then proceeded with.

1991, c. 64, s. 2230.

2231. Any partnership constituted for an agreed term may be continued by consent of all the partners.

1991, c. 64, s. 2231.

2232. The uniting of all the shares in the hands of a single partner does not entail dissolution of the partnership, provided at least one other partner joins the partnership within one hundred and twenty days.

1991, c. 64, s. 2232.

2233. The powers of the partners to act on behalf of the partnership cease upon the dissolution of the partnership, except in respect of acts which are a necessary consequence of business already begun.

Anything done, however, in the ordinary course of business of the partnership by a partner unaware of the dissolution of the partnership and acting in good faith binds the partnership and the other partners as if the partnership were still in existence.

1991, c. 64, s. 2233.

2234. Dissolution of the partnership does not affect the rights of third persons in good faith who subsequently enter into a contract with a partner or a mandatary acting on behalf of the partnership.

1991, c. 64, s. 2234.

2235. Liquidation of the partnership is subject to the rules provided in articles 358 to 364 of the Book on Persons, adapted as required. The notices required by those rules shall be filed in accordance with the legislation concerning the legal publication of partnerships.

1991, c. 64, s. 2235.

SECTION III

LIMITED PARTNERSHIPS

2236. A limited partnership is a partnership consisting of one or more general partners who are the sole persons authorized to administer and bind the partnership, and of one or more special partners who are bound to furnish a contribution to the common stock of the partnership.

1991, c. 64, s. 2236.

2237. A limited partnership may make a distribution of securities to the public to establish or increase the common stock, and issue negotiable instruments.

A third person who undertakes to make a contribution becomes a special partner of the partnership.

1991, c. 64, s. 2237.

2238. General partners have the powers, rights and obligations of the partners of a general

partnership but they are bound to render an account of their administration to the special partners.

The general partners are bound by the same obligations towards the special partners as those binding an administrator charged with full administration of the property of others towards the beneficiary of the administration.

Clauses restricting the powers of the general partners may not be set up against third persons in good faith.

1991, c. 64, s. 2238.

2239. The general partners keep a register at the place of the principal establishment of the partnership, containing the name and domicile of each of the special partners and any information concerning their contributions to the common stock.

1991, c. 64, s. 2239.

2240. The contribution of a special partner, where it consists of a sum of money or of any other property, is furnished at the time of establishment of the common stock or at any other time as an additional contribution to the common stock.

The special partner assumes the risk of loss of the agreed contribution by superior force until it is delivered.

1991, c. 64, s. 2240.

2241. While the partnership exists, no special partner may withdraw part of his contribution in property to the common stock, in any way, unless he obtains the consent of a majority of the other partners and the property remaining after the withdrawal is sufficient to discharge the debts of the partnership.

1991, c. 64, s. 2241.

2242. A special partner is entitled to receive his share of the profits, but if the payment of the profits reduces the common stock, every special partner who receives such a payment is bound to restore the sum necessary to cover his share of the deficit, with interest.

In the case of a partnership whose capital includes property that is consumed by its exploitation by the partnership, the special partner may receive his share of the profits only if the property remaining after the payment is sufficient to discharge the debts of the partnership.

1991, c. 64, s. 2242.

2243. The share of a special partner in the common stock of the partnership is transferable.

In respect of third persons, the transferor remains liable for the obligations which may result from his share in the partnership while he was still a special partner.

1991, c. 64, s. 2243.

2244. A special partner may not give other than an advisory opinion with regard to the management of the partnership.

A special partner may not negotiate any business on behalf of the partnership or act as mandatary or agent for the partnership or allow his name to be used in any act of the partnership; otherwise, he is liable in the same manner as a general partner for the obligations of the partnership resulting from such acts and, according to the importance or number of such acts, he may be liable in the same manner as a general partner for all the obligations of the partnership.

1991, c. 64, s. 2244.

2245. Where the general partners can no longer act, the special partners may perform any act of simple administration required for the management of the partnership.

If the general partners are not replaced within one hundred and twenty days, the partnership is dissolved.

1991, c. 64, s. 2245.

2246. Where the property of the partnership is insufficient, the general partners are solidarily liable for the debts of the partnership in respect of third persons; a special partner is liable for the debts up to the agreed amount of his contribution, notwithstanding any transfer of his share in the common stock.

Any stipulation whereby a special partner is bound to secure or assume the debts of the partnership beyond the agreed amount of his contribution is without effect.

1991, c. 64, s. 2246.

2247. A special partner whose name appears in the firm name of the partnership is liable for the obligations of the partnership in the same manner as a general partner, unless his quality of special partner is clearly indicated.

1991, c. 64, s. 2247.

2248. Where the property of the partnership is insufficient, a special partner may not, in that quality, claim as a creditor until the other creditors of the partnership are satisfied.

1991, c. 64, s. 2248.

2249. In all other respects, the rules governing general partnerships, adapted as required, apply to limited partnerships.

1991, c. 64, s. 2249.

SECTION IV

UNDECLARED PARTNERSHIPS

§1. — *Establishment of an undeclared partnership*

2250. The contract by which an undeclared partnership is established may be written or verbal. It may also arise from an overt act indicating the intention to form an undeclared partnership.

Mere indivision of property existing between several persons does not create a presumption of their intention to form an undeclared partnership.

1991, c. 64, s. 2250.

§2. — *Relations of the partners between themselves*

2251. The partners agree upon the object, operation, management and any other terms and conditions of an undeclared partnership.

Failing any special agreement, the relations of the partners between themselves are subject to the provisions governing the relations of general partners between themselves and with the partnership, adapted as required.

1991, c. 64, s. 2251.

§3. — *Relations of the partners with third persons*

2252. In respect of third persons, each partner retains the ownership of the property constituting his contribution to the undeclared partnership.

Property that was undivided before the combination of the contributions of the partners or that is undivided by agreement of the partners, or any property acquired by the use of undivided sums during the term of the contract of partnership is undivided property in respect of the partners.

1991, c. 64, s. 2252.

2253. Each partner contracts in his own name and is alone liable towards third persons.

Where, however, to the knowledge of third persons, the partners act in the quality of partners, each partner is liable towards the third persons for the obligations resulting from acts performed in that quality by any of the other partners.

1991, c. 64, s. 2253.

2254. The partners are not solidarily liable for debts contracted in carrying on their business unless the debts have been contracted for the use or operation of a common enterprise; they are liable towards the creditor, each for an equal share, even if their shares in the undeclared partnership are unequal.

1991, c. 64, s. 2254.

2255. No stipulation limiting the extent of the partners' obligation towards third persons may be set up against the third persons.

1991, c. 64, s. 2255.

2256. The partners may exercise all the rights arising from contracts entered into by another partner, but the third person is bound only towards the partner with whom he entered into the contract, unless the partner declared his quality.

1991, c. 64, s. 2256.

2257. Any action which may be brought against all the partners may also be brought against one or more of them, as partners of other persons, without naming the other persons in the action.

Where judgment is rendered against the partner or partners sued, all the other partners may be sued jointly or separately on the same cause of action. Where the action is founded on an obligation evidenced in a writing naming all the partners bound thereby, the judgment may not be set up against them unless all of them are parties to the action.

1991, c. 64, s. 2257.

§4. — *Termination of the contract of undeclared partnership*

2258. A contract of undeclared partnership is terminated by consent of all the partners or by the expiry of its term or the fulfilment of the condition attached to the contract, by the accomplishment or impossibility of accomplishing the object of the contract.

It is also terminated by the death or bankruptcy of one of the partners, by his being placed under protective supervision or by a judgment ordering the seizure of his share.

1991, c. 64, s. 2258.

2259. It may be stipulated that in the case of death of one of the partners the undeclared partnership will continue with his legal representatives or among the surviving partners. In the latter case, the representatives of the deceased partner are entitled to the partition of the property of the undeclared partnership only as it existed at the time of death of the partner. They may not claim benefits arising from subsequent transactions unless they are a necessary consequence of transactions carried out before the death.

1991, c. 64, s. 2259.

2260. Where a contract of undeclared partnership is made for a term that is not fixed or where it reserves a right of withdrawal, it may be terminated at any time by mere notice from one of the partners to the other partners, provided it is given in good faith and not at an inopportune moment.

1991, c. 64, s. 2260.

2261. A contract of undeclared partnership may be resiliated for a legitimate cause, in particular where one of the partners fails to perform his obligations or hinders the carrying on of the business of the partners.

1991, c. 64, s. 2261.

2262. The powers of the partners to act under the contract of undeclared partnership cease upon the termination of the contract, except as regards necessary consequences of business transactions already begun.

Anything done, however, in the course of activities of the undeclared partnership by a partner who is unaware of the termination of the contract and is acting in good faith binds all the partners as if the undeclared partnership continued to exist.

1991, c. 64, s. 2262.

2263. The termination of a contract of undeclared partnership does not affect the rights of third persons in good faith who subsequently contract with a partner or any other mandatary of all the partners.

1991, c. 64, s. 2263.

2264. Failing agreement as to the mode of liquidation of the undeclared partnership or the selection of a liquidator, any interested person may apply to the court for the appointment of a liquidator.

1991, c. 64, s. 2264.

2265. A partner is entitled to restitution of the property corresponding to the share he owns, and to demand the apportionment of the undivided property he owns in the undeclared partnership, in kind or in equivalence, upon termination of the contract.

Failing agreement as to the value of the share, the liquidator or, failing him, the court determines it. The liquidator or the court may, however, defer assessment of contingent assets or liabilities.

1991, c. 64, s. 2265.

2266. The liquidator has the seisin of the common property and acts as an administrator of the property of others entrusted with full administration.

The liquidator first pays the debts, then reimburses the contributions and, finally, partitions the assets among the partners.

1991, c. 64, s. 2266.

SECTION V

ASSOCIATIONS

2267. The contract by which an association is established may be written or verbal. It may also arise from overt acts indicating the intention to form an association.

1991, c. 64, s. 2267.

2268. The contract of association governs the object, functioning, management and other terms and conditions of the association.

It is presumed to allow the admission of members other than the founding members.

1991, c. 64, s. 2268.

2269. Failing any special rules in the contract of association, the directors of the association are elected from among its members, and the founding members are, of right, the directors of the association until they are replaced.

1991, c. 64, s. 2269.

2270. The directors act as mandataries of the members of the association.

Their only powers are those conferred on them by the contract of association or by law, or those arising from their mandate.

1991, c. 64, s. 2270.

2271. The directors may sue and be sued to assert the rights and interests of the association.

1991, c. 64, s. 2271.

2272. Every member is entitled to participate in collective decisions, and he may not be prevented from exercising that right by the contract of association.

Collective decisions, including those to amend the contract of association, are taken by a majority vote of the members, unless otherwise stipulated in the contract.

1991, c. 64, s. 2272.

2273. Notwithstanding any stipulation to the contrary, any member may inform himself of the affairs of the association and consult its books and records even if he is excluded from management.

In exercising this right, the member is bound not to impede the activities of the association unduly nor to prevent the other members from exercising the same right.

1991, c. 64, s. 2273.

2274. Where the property of the association is insufficient, the directors and any member administering in fact the affairs of the association are solidarily or jointly liable for the obligations of the association resulting from decisions to which they gave their approval during their administration, whether or not the obligations have been contracted for the service or operation of an enterprise of the association.

The property of each of these persons is not applied to the payment of creditors of the association, however, until after his own creditors are paid.

1991, c. 64, s. 2274.

2275. A member who has not administered the association is liable for the debts of the association only up to the promised contribution and the subscriptions due for payment.

1991, c. 64, s. 2275.

2276. Notwithstanding any stipulation to the contrary, a member may withdraw from the association, even if it has been established for a fixed term; if he withdraws, he is bound to pay the promised contribution and any subscriptions due.

A member may be excluded from the association by decision of the members.

1991, c. 64, s. 2276.

2277. A contract of association is terminated by the expiry of its term or the fulfilment of the condition attached to the contract, or by the accomplishment or impossibility of accomplishing the object of the contract.

It is also terminated by decision of the members.

1991, c. 64, s. 2277.

2278. When a contract of association is terminated, the association is liquidated by a person appointed by the directors or, failing that, by the court.

1991, c. 64, s. 2278.

2279. After payment of the debts, the remaining property devolves in accordance with the rules respecting the contract of association or, failing special rules, it is shared equally among the members.

However, any property derived from contributions of third persons devolves, notwithstanding any stipulation to the contrary, to an association, legal person or trust sharing objectives similar to those of the association; if that is not possible, it devolves to the State and is administered by the Public Curator as property without an owner or, if of little value, is shared equally among the members.

1991, c. 64, s. 2279.

CHAPTER XI

DEPOSIT

SECTION I

DEPOSIT IN GENERAL

§1. — *General provisions*

2280. Deposit is a contract by which a person, the depositor, hands over movable property to another person, the depositary, who undertakes to keep it for a certain time and to restore it to him.

Deposit is gratuitous but may be by onerous title where permitted by usage or an agreement.

1991, c. 64, s. 2280.

2281. Handing over of the property to be deposited is essential for the completion of the contract of deposit.

Fictitious handing over is sufficient where the depositary already has detention of the property under another title.

1991, c. 64, s. 2281.

2282. Where the deposit has been made with a minor person or with a person under protective supervision, the depositor may revendicate the property deposited so long as it remains in the hands of that person; where restitution in kind is impossible, he is entitled to claim the value of the property up to the amount of the enrichment of the person who received it.

1991, c. 64, s. 2282.

§2. — *Obligations of the depositary*

2283. The depositary shall act with prudence and diligence in the safekeeping of the property; he may not use it without the permission of the depositor.

1991, c. 64, s. 2283.

2284. The depositary may not require the depositor to prove that he is the owner of the property deposited, or require such proof of the person to whom the property is to be restored.

1991, c. 64, s. 2284.

2285. The depositary is bound to restore the deposited property to the depositor on

demand, even if a term has been fixed for restitution.

Where the depositary has issued a receipt or any other document evidencing the deposit or giving the person holding it the right to withdraw the property, he may require that the document be returned to him.

1991, c. 64, s. 2285.

2286. The depositary shall return the identical property he received on deposit.

Where the depositary has received something to replace property that had perished by superior force, he shall return what he has received to the depositor.

1991, c. 64, s. 2286.

2287. The depositary is bound to restore the fruits and revenues he has received from the property deposited.

The depositary owes interest on money deposited only when he is in default to restore the money.

1991, c. 64, s. 2287.

2288. Where the heir or other legal representative of the depositary sells in good faith property deposited without his knowledge, he is bound only to return the price he has received or to assign his claim against the purchaser if the price has not been paid.

1991, c. 64, s. 2288.

2289. Where a deposit is gratuitous, the depositary is liable for the loss of the property deposited, if caused by his fault; where a deposit is by onerous title or where it was required by the depositary, he is liable for the loss of the property, unless he proves superior force.

1991, c. 64, s. 2289.

2290. The court may reduce the damages payable by the depositary where the deposit is gratuitous or where the depositary received in deposit documents, money or other valuables whose nature or value was not declared by the depositor.

1991, c. 64, s. 2290.

2291. The property is restored at the place where it was handed over for deposit, unless the parties have agreed on another place.

1991, c. 64, s. 2291.

2292. Where the deposit is gratuitous, the cost of restitution of the property is borne by the depositor, but it is borne by the depositary if he, without the knowledge of the depositor, has transported the property elsewhere than the place agreed for its restitution, unless he did it to

preserve the property.

Where the deposit is by onerous title, the cost of restitution is borne by the depositary.

1991, c. 64, s. 2292.

§3. — *Obligations of the depositor*

2293. The depositor is bound to reimburse the depositary for any expenses he has incurred for the preservation of the property, to indemnify him for any loss the property may have caused him and to pay him the agreed remuneration.

The depositary is entitled to retain the deposited property until he is paid.

1991, c. 64, s. 2293.

2294. The depositor is liable to indemnify the depositary for any injury caused to him by the premature restitution of the property if the term was agreed upon in the sole interest of the depositary.

1991, c. 64, s. 2294.

SECTION II

NECESSARY DEPOSIT

2295. Necessary deposit takes place where a person is compelled, by an unforeseen and urgent necessity due to an accident or to superior force, to entrust the custody of property to another person.

1991, c. 64, s. 2295.

2296. The depositary may not refuse to accept the property without a serious reason.

The depositary is liable for loss of the property in the same manner as a depositary by gratuitous title.

1991, c. 64, s. 2296.

2297. The deposit of property in a health or social services establishment is presumed to be a necessary deposit.

1991, c. 64, s. 2297.

SECTION III

DEPOSIT WITH AN INNKEEPER

2298. A person who offers lodging to the public, called an innkeeper, is liable in the same

manner as a depositary by onerous title for the loss of the personal effects and baggage brought by persons who lodge with him, up to ten times the displayed cost of lodging for one day or, in the case of property he has accepted for deposit, up to fifty times such cost.

1991, c. 64, s. 2298.

2299. An innkeeper is bound to accept for deposit the documents, sums of money and other valuables brought by his guests; he may not refuse them unless, given the size and operating conditions of the hotel, they appear to be of excessive value or cumbersome, or unless they are dangerous.

The innkeeper may examine the property handed over to him for deposit and require it to be placed in a closed or sealed receptacle.

1991, c. 64, s. 2299.

2300. An innkeeper who places a safe at the disposal of guests in the room itself is not deemed to have accepted for deposit the property placed in such a safe by a guest.

1991, c. 64, s. 2300.

2301. Notwithstanding the foregoing, the liability of the innkeeper is unlimited where the loss of property brought by a guest is caused by the intentional or gross fault of the innkeeper or of a person for whom he is responsible.

The liability of the innkeeper is also unlimited where he refuses the deposit of property he is bound to accept, or where he has not taken the necessary measures to inform the guest of the limits of his liability.

1991, c. 64, s. 2301.

2302. The innkeeper is entitled to retain, as security for payment of the cost of lodging and services actually provided by him, the effects and baggage brought into the hotel by the guest, except his personal documents and effects of no market value.

1991, c. 64, s. 2302.

2303. The innkeeper may dispose of the property retained, failing payment, in accordance with the rules prescribed in the Book on Property, which apply to the holder of property entrusted and forgotten.

1991, c. 64, s. 2303.

2304. The innkeeper is bound to post up the text of the articles of this section, printed in legible type, in the offices, public rooms and bedrooms of his establishment.

1991, c. 64, s. 2304.

SECTION IV

SEQUESTRATION

2305. Sequestration is the deposit by which persons place property over which they are in dispute in the hands of another person chosen by them, who binds himself to restore it, once the issue is decided, to the person who will then be entitled to it.

1991, c. 64, s. 2305.

2306. The object of sequestration may be immovable property as well as movable property.

An immovable is handed over by abandoning detention of the immovable to the depositary charged with acting as sequestrator.

1991, c. 64, s. 2306.

2307. The parties elect the sequestrator by mutual agreement; they may elect one of their number to act as sequestrator.

Where the parties disagree on the election of a sequestrator or on certain conditions attached to his duties, they may apply to the court for a ruling on the issue.

1991, c. 64, s. 2307.

2308. A sequestrator may not make any disbursement or perform any act other than acts of simple administration in respect of the sequestered property unless otherwise stipulated or unless authorized by the court.

He may, however, with the consent of the parties or, failing that, with the authorization of the court, alienate, without delay or formalities, property which entails costs of custody or maintenance disproportionate to its value.

1991, c. 64, s. 2308.

2309. The sequestrator is discharged, upon the termination of the contestation, by the restitution of the property to the person entitled to it.

The sequestrator may not be discharged and restore the property before the contestation is terminated except with the consent of all the parties or, failing that, for sufficient cause; in this last case, he may be discharged only with the authorization of the court.

1991, c. 64, s. 2309.

2310. The sequestrator shall render an account of his management at the end of his administration, and also earlier at the request of the parties or by order of the court.

1991, c. 64, s. 2310.

2311. A sequestrator may be appointed by judicial authority; in such a case, he is subject to the provisions of the Code of Civil Procedure and to the rules contained in this chapter, so far as they are consistent.

1991, c. 64, s. 2311.

CHAPTER XII

LOAN

SECTION I

NATURE AND KINDS OF LOANS

2312. There are two kinds of loans: loan for use and simple loan.

1991, c. 64, s. 2312.

2313. Loan for use is a gratuitous contract by which a person, the lender, hands over property to another person, the borrower, for his use, under the obligation to return it to him after a certain time.

1991, c. 64, s. 2313.

2314. A simple loan is a contract by which the lender hands over a certain quantity of money or other property that is consumed by the use made of it, to the borrower, who binds himself to return a like quantity of the same kind and quality to the lender after a certain time.

1991, c. 64, s. 2314.

2315. A simple loan is presumed to be made by gratuitous title unless otherwise stipulated or unless it is a loan of money, in which case it is presumed to be made by onerous title.

1991, c. 64, s. 2315.

2316. A promise to lend confers on the beneficiary of the promise, failing fulfilment of the promise by the promisor, only the right to claim damages from the promisor.

1991, c. 64, s. 2316.

SECTION II

LOAN FOR USE

2317. The borrower is bound to act with prudence and diligence in the safekeeping and preservation of the property loaned.

1991, c. 64, s. 2317.

2318. The borrower may not put the property loaned to a use other than that for which it is intended; nor may he allow a third person to use it without the authorization of the lender.

1991, c. 64, s. 2318.

2319. The lender may claim the property before the due term or, if the term is indeterminate, before the borrower ceases to need it, where he himself is in urgent and unforeseen need of the property or where the borrower dies or fails to perform his obligations.

1991, c. 64, s. 2319.

2320. The borrower is entitled to the reimbursement of any necessary and urgent expenses incurred for the preservation of the property.

The borrower alone bears the expenses he has incurred in using the property.

1991, c. 64, s. 2320.

2321. Where the lender knew that the property loaned had latent defects but failed to inform the borrower, he is liable for any injury suffered by the borrower as a result.

1991, c. 64, s. 2321.

2322. The borrower is not liable for loss of the property resulting from the use for which it is loaned.

Where, however, the borrower puts the property to a use other than that for which it is intended, or uses it for a longer time than agreed, he is liable for its loss even where caused by superior force, unless the superior force would in any case have caused the loss of the property.

1991, c. 64, s. 2322.

2323. Where the property loaned perishes by superior force and the borrower could have protected it by using his own property or if, being unable to save both, he chose to save his own, he is liable for the loss.

1991, c. 64, s. 2323.

2324. The borrower may not retain the property for what the lender owes him unless the debt is an urgent and necessary expense incurred for the preservation of the property.

1991, c. 64, s. 2324.

2325. An action in damages for injury caused by the fault of a third person to the property

loaned may be taken by the lender or the borrower, whichever is the more diligent.

1991, c. 64, s. 2325.

2326. Where several persons borrow the same property together, they are solidarily liable towards the lender.

1991, c. 64, s. 2326.

SECTION III

SIMPLE LOAN

2327. By simple loan, the borrower becomes the owner of the property loaned and he bears the risks of loss of the property from the time it is handed over to him.

1991, c. 64, s. 2327.

2328. The lender is liable, in the same manner as the lender for use, for any injury resulting from defects in the property loaned.

1991, c. 64, s. 2328.

2329. The borrower is bound to return the same quantity and quality of property as he received and nothing more, notwithstanding any increase or reduction of its price.

In the case of a loan of a sum of money, the borrower is bound to return only the nominal amount received, notwithstanding any variation in its value.

1991, c. 64, s. 2329.

2330. The loan of a sum of money bears interest from the date the money is handed over to the borrower.

1991, c. 64, s. 2330.

2331. The discharge of the capital of a loan of money entails the discharge of the interest.

1991, c. 64, s. 2331.

2332. In the case of a loan of a sum of money, the court may pronounce the nullity of the contract, order the reduction of the obligations arising from the contract or revise the terms and conditions of the performance of the obligations to the extent that it finds that, having regard to the risk and to all the circumstances, one of the parties has suffered lesion.

1991, c. 64, s. 2332.

CHAPTER XIII

SURETYSHIP

SECTION I

NATURE, OBJECT AND EXTENT OF SURETYSHIP

2333. Suretyship is a contract by which a person, the surety, binds himself towards the creditor, gratuitously or for remuneration, to perform the obligation of the debtor if he fails to fulfil it.

1991, c. 64, s. 2333.

2334. Suretyship may result from an agreement, or may be imposed by law or ordered by judgment.

1991, c. 64, s. 2334.

2335. Suretyship is not presumed; it is effected only if it is express.

1991, c. 64, s. 2335.

2336. A person may become surety for an obligation without the order or even the knowledge of the person for whom he binds himself.

A person may also become surety not only for the principal debtor but also for his surety.

1991, c. 64, s. 2336.

2337. A debtor bound to furnish a surety shall offer a surety having and maintaining sufficient property in Québec to meet the object of the obligation and having his domicile in Canada; otherwise, he shall furnish another surety.

This rule does not apply where the creditor has required that a specific person should be the surety.

1991, c. 64, s. 2337.

2338. Where a debtor is bound to furnish a legal or judicial surety, he may offer any other sufficient security instead.

1991, c. 64, s. 2338.

2339. Any dispute as to the sufficiency of the property of the surety or the sufficiency of the security offered is decided by the court.

1991, c. 64, s. 2339.

2340. Suretyship may be contracted only for a valid obligation.

It may be for the fulfilment of an obligation from which the principal debtor may be discharged by invoking his incapacity, provided the surety is aware of this, or the fulfilment of a purely natural obligation.

1991, c. 64, s. 2340.

2341. Suretyship may not be contracted for an amount in excess of that owed by the debtor or under more onerous conditions.

Suretyship which does not meet that requirement is not null; it is only reducible to the measure of the principal obligation.

1991, c. 64, s. 2341.

2342. Suretyship may be contracted for part of the principal obligation and under less onerous conditions.

1991, c. 64, s. 2342.

2343. A suretyship may not be extended beyond the limits for which it was contracted.

1991, c. 64, s. 2343.

2344. Suretyship extends to all the accessories of the principal obligation, even to the costs of the original action, and to all costs subsequent to notice of such action given to the surety.

1991, c. 64, s. 2344.

SECTION II

EFFECTS OF SURETYSHIP

§1. — Effects between the creditor and the surety

2345. At the request of the surety, the creditor is bound to provide him with any useful information respecting the content and the terms and conditions of the principal obligation and the progress made in its performance.

1991, c. 64, s. 2345.

2346. The surety is bound to fulfil the obligation of the debtor only if the debtor fails to perform it.

1991, c. 64, s. 2346.

2347. A conventional or legal surety enjoys the benefit of discussion unless he renounces it expressly.

A person who is surety of a judicial surety may not demand the discussion of the principal debtor nor of the surety.

1991, c. 64, s. 2347.

2348. A surety who avails himself of the benefit of discussion shall invoke it in any action taken against him and indicate to the creditor the seizable property of the principal debtor advancing to him the sums required for the costs of discussion.

Where the creditor neglects to carry out the discussion, he is liable towards the surety, up to the value of the property indicated, for any insolvency of the principal debtor occurring after the surety has indicated the seizable property of the principal debtor.

1991, c. 64, s. 2348.

2349. Where several persons become sureties of the same debtor for the same debt, each of them is liable for the whole debt but may invoke the benefit of division if he has not renounced it expressly in advance.

Each surety who avails himself of the benefit of division may require the creditor to divide his action and to reduce it to the amount of the share and portion of each surety.

1991, c. 64, s. 2349.

2350. If, at the time division was obtained by one of the sureties, some of them were insolvent, that surety is proportionately liable for their insolvency, but he may not be made liable for insolvencies occurring after the division.

1991, c. 64, s. 2350.

2351. Where the creditor has himself voluntarily divided his action, he may not call the division into question, although at the time some of the sureties had become insolvent.

1991, c. 64, s. 2351.

2352. Where the surety binds himself with the principal debtor as solidary surety or solidary codebtor, he may no longer invoke the benefits of discussion and division; the effects of his undertaking are governed by the rules established with respect to solidary debts so far as they are consistent with the nature of the suretyship.

1991, c. 64, s. 2352.

2353. A surety, whether or not he is a solidary surety, may set up against the creditor all the defences of the principal debtor, except those which are purely personal to the principal debtor or that are excluded by the terms of his undertaking.

1991, c. 64, s. 2353.

2354. The surety is not discharged by mere prorogation of the term granted by the creditor to the principal debtor; in the same way, forfeiture of the term by the principal debtor produces its effects in respect of the surety.

1991, c. 64, s. 2354.

2355. A surety may not renounce in advance the right to be provided with information or the benefit of subrogation.

1991, c. 64, s. 2355.

§2. — *Effects between the debtor and the surety*

2356. A surety who has bound himself with the consent of the debtor may claim from him what he has paid in capital, interest and costs, in addition to damages for any injury he has suffered by reason of the suretyship; he may also charge interest on any sum he has had to pay to the creditor, even if the principal debt was not producing interest.

A surety who has bound himself without the consent of the debtor may only recover from him what the debtor would have been bound to pay, including damages, if there had been no suretyship; however, costs subsequent to indication of the payment are payable by the debtor.

1991, c. 64, s. 2356.

2357. Where the principal debtor has been released from his obligation by invoking his incapacity, the surety has, to the extent of the resulting enrichment of the debtor, a remedy for reimbursement against him.

1991, c. 64, s. 2357.

2358. A surety having paid a debt has no remedy against the principal debtor who pays it subsequently, if he failed to inform the debtor that he had paid it.

A surety who has paid without informing the principal debtor has no remedy against him if, at the time of the payment, the debtor had defences that could have enabled him to have the debt declared extinguished. In these circumstances, the surety has a remedy only for the sum the debtor could have been required to pay, to the extent that the debtor could set up other defences against the creditor to cause the debt to be reduced.

In any case, the surety retains his right of action for recovery against the creditor.

1991, c. 64, s. 2358.

2359. A surety who has bound himself with the consent of the debtor may take action against him, even before paying, if he is sued for payment or the debtor is insolvent, or if the debtor has bound himself to effect his acquittance within a certain time.

The same rule applies where the debt becomes payable by the expiry of its term, disregarding any extension granted to the debtor by the creditor without the consent of the surety, or where, by reason of losses incurred by the debtor or of any fault committed by the debtor, the surety is at appreciably higher risk than at the time he bound himself.

1991, c. 64, s. 2359.

§3. — *Effects between sureties*

2360. Where several persons have become sureties of the same debtor for the same debt, the surety who has paid the debt has in addition to the action in subrogation, a personal right of action against the other sureties, each for his share and portion.

The personal right of action may only be exercised where the surety has paid in one of the cases in which he could take action against the debtor before paying.

Where one of the sureties is insolvent, his insolvency is apportioned by contribution among the other sureties, including the surety who made the payment.

1991, c. 64, s. 2360.

SECTION III

TERMINATION OF SURETYSHIP

2361. Notwithstanding any contrary provision, the death of the surety terminates the suretyship.

1991, c. 64, s. 2361.

2362. Where the suretyship is contracted with a view to covering future or indeterminate debts, or for an indeterminate period, the surety may terminate it after three years, so long as the debt has not become exigible, by giving prior and sufficient notice to the debtor, the creditor and the other sureties.

This rule does not apply in the case of a judicial suretyship.

1991, c. 64, s. 2362.

2363. A suretyship attached to the performance of special duties is terminated upon cessation of the duties.

1991, c. 64, s. 2363.

2364. Upon termination of the suretyship, the surety remains liable for debts existing at that time, even if those debts are subject to a condition or a term.

1991, c. 64, s. 2364.

2365. Where, as a result of the act of the creditor, the surety can no longer be usefully subrogated to his rights, the surety is discharged to the extent of the prejudice he has suffered.

1991, c. 64, s. 2365.

2366. Where a creditor voluntarily accepts property in payment of the capital debt, the surety is discharged even if the creditor is subsequently evicted.

1991, c. 64, s. 2366.

CHAPTER XIV

ANNUITIES

SECTION I

NATURE OF THE CONTRACT AND SCOPE OF THE RULES GOVERNING IT

2367. A contract for the constitution of an annuity is a contract by which a person, the debtor, undertakes, gratuitously or in exchange for the alienation of capital for his benefit, to make periodical payments to another person, the annuitant, for a certain time.

The capital may consist of immovable or movable property; if it is a sum of money, it may be paid in cash or by instalments.

1991, c. 64, s. 2367.

2368. Where the debtor undertakes to pay the annuity in return for the transfer, for his benefit, of ownership of an immovable, the contract is called alienation for rent and it is principally governed by the rules respecting the contract of sale, to which it is similar.

1991, c. 64, s. 2368.

2369. An annuity may be constituted for the benefit of a person other than the person who furnishes the capital.

In such a case, the contract is not subject to the forms required for gifts even though the annuity so constituted is received gratuitously by the annuitant.

1991, c. 64, s. 2369.

2370. An annuity may be constituted by contract, will, judgment or law.

The rules of this chapter, adapted as required, apply to such annuities.

1991, c. 64, s. 2370.

SECTION II

SCOPE OF THE CONTRACT

2371. An annuity may be constituted for life or for a fixed term.

A life annuity is an annuity payable for a duration limited to the lifetime of one or several persons.

A fixed term annuity is an annuity payable for a duration determined otherwise.

1991, c. 64, s. 2371.

2372. A life annuity may be set up for the lifetime of the person who constitutes it or receives it or for the lifetime of a third person who has no entitlement whatever to enjoyment of the annuity.

It may be stipulated, however, that the payment of the annuity will continue beyond the death of the person for whose lifetime the duration of payment was constituted, for the benefit, as the case may be, of a determinate person or of the heirs of the annuitant.

1991, c. 64, s. 2372.

2373. A life annuity set up for the lifetime of a person who is dead on the day the debtor is to begin paying the annuity or who dies within the following thirty days is without effect.

Similarly, a life annuity set up for the lifetime of a person who does not exist on the day on which the debtor is to begin paying the annuity, unless the person was conceived at that time and is born alive and viable, is without effect.

1991, c. 64, s. 2373.

2374. Where a life annuity is set up for the lifetime of several persons successively, it has effect only if the first of those persons exists on the day the debtor is to begin paying the annuity or if he is conceived at that time and is born alive and viable.

It terminates where the persons concerned are dead or are not born alive and viable, but not later than one hundred years after it is constituted.

1991, c. 64, s. 2374.

2375. A non-returnable loan is presumed to constitute a life annuity for the benefit and for the lifetime of the lender.

1991, c. 64, s. 2375.

2376. The duration of payment of any annuity, whether or not it is a life annuity, is in all cases limited or reduced to one hundred years after the annuity is constituted even if the

contract provides for a longer duration or constitutes a successive annuity.

1991, c. 64, s. 2376.

SECTION III

CERTAIN EFFECTS OF THE CONTRACT

2377. A stipulation to the effect that the annuity is unseizable and inalienable is without effect unless the annuity is received gratuitously by the annuitant and, even in such a case, the stipulation has effect only up to the amount of the annuity necessary for the annuitant as support.

1991, c. 64, s. 2377.

2378. Any capital accumulated for the payment of the annuity is unseizable where the annuity is payable to the annuitant and to the person substituted for him, so long as the capital is applied to the payment of an annuity.

Only that part of the capital is unseizable, however, which, in the estimation of the seizing creditor, the debtor and the annuitant or, if they disagree, the court, would be necessary, for the duration fixed in the contract, for the payment of an annuity which would meet the requirements of the annuitant for support.

1991, c. 64, s. 2378.

2379. The designation or revocation of an annuitant, other than the person who furnished the capital of the annuity, is governed by the rules respecting stipulation for another.

However, the designation or revocation of an annuitant, in respect of annuities transacted by insurers or of retirement plan annuities, is governed by those rules respecting the contract of insurance which relate to beneficiaries and subrogated holders, adapted as required.

1991, c. 64, s. 2379.

2380. A stipulation may be made to the effect that a life annuity constituted for the benefit of two or more annuitants jointly is revertible, on the death of one of them, upon the life of the annuitants who survive him.

Similarly, a life annuity constituted for the benefit of spouses is presumed, on the death of either spouse, to be revertible upon the life of the surviving spouse.

1991, c. 64, s. 2380.

2381. The life annuity is due to the annuitant only in proportion to the number of days in the lifetime of the person upon whose life the duration of payment of the annuity was established, and the annuitant may not require payment of the annuity unless he establishes the existence of the person.

Where it was stipulated that the annuity would be paid in advance, however, every amount that should have been paid is acquired from the day payment was to have been made.

1991, c. 64, s. 2381.

2382. Payments are made at the end of each payment period, which may not exceed one year; the amount due is computed from the day the debtor is bound to begin paying the annuity.

1991, c. 64, s. 2382.

2383. In no case may the debtor free himself from the payment of the annuity by offering to reimburse the capital value of the annuity and renouncing the recovery of the annuity payments made; he is bound to pay the annuity for the whole duration stipulated in the contract.

1991, c. 64, s. 2383.

2384. The debtor of an annuity may appoint an authorized insurer to replace him, by paying him the value of the annuity.

Similarly, the owner of an immovable charged as security for the payment of the annuity may substitute the security offered by an authorized insurer for that securing the annuity.

The annuitant may not object to the substitution, but he may require that the purchase of the annuity be made with another insurer, or he may contest the determined capital value or the value of the annuity arising therefrom.

1991, c. 64, s. 2384.

2385. The substitution releases the debtor or the owner of the immovable charged as security for the payment of the annuity, upon payment of the required capital; it binds the insurer towards the annuitant and, as the case may be, entails the extinction of the hypothec securing the payment of the annuity.

1991, c. 64, s. 2385.

2386. The non-payment of the annuity is not a reason to permit the annuitant to demand recovery of the capital alienated for the constitution of the annuity; it only allows him, beyond demanding payment of the amount due, to seize and sell the property of the debtor, and to require or order the use of a sufficient amount, from the proceeds of the sale, to ensure payment of the annuity or to require that the debtor be replaced by an authorized insurer.

Payment of the capital may be required, however, if the debtor becomes insolvent or bankrupt or decreases, by his act and without the consent of the annuitant, the security he has furnished to ensure the payment of the annuity.

1991, c. 64, s. 2386.

2387. Where the payment of an annuity is secured by a hypothec on property that is to be the subject of a forced sale, the annuitant may not require that the sale be carried out subject to his annuity but if his hypothec ranks first, he may require the creditor to furnish him with sufficient surety to ensure that the annuity continues to be paid.

Failure to furnish a surety entitles the annuitant, according to his rank, to receive the capital value of the annuity on the day of collocation or distribution.

1991, c. 64, s. 2387.

2388. The capital value of an annuity is always estimated to be equal to the amount that would be sufficient to acquire an annuity of equivalent value from an authorized insurer.

1991, c. 64, s. 2388.

CHAPTER XV

INSURANCE

SECTION I

GENERAL PROVISIONS

§1. — Nature of the contract of insurance and classes of insurance

2389. A contract of insurance is a contract whereby the insurer undertakes, for a premium or assessment, to make a payment to the client or a third person if an event covered by the insurance occurs.

Insurance is divided into marine insurance and non-marine insurance.

1991, c. 64, s. 2389.

2390. The object of marine insurance is to indemnify the insured against losses incident to marine adventure.

1991, c. 64, s. 2390.

2391. Non-marine insurance is divided into insurance of persons and damage insurance.

1991, c. 64, s. 2391.

2392. Insurance of persons deals with the life, physical integrity or health of the insured.

Insurance of persons is divided into individual insurance and group insurance.

Group insurance of persons, under a master policy, covers the participants in a specified group and, in some cases, their families or dependants.

1991, c. 64, s. 2392.

2393. Life insurance guarantees payment of the agreed amount upon the death of the insured; it may also guarantee payment of the agreed amount during the lifetime of the insured, on his surviving a specified period or on the occurrence of an event related to his existence.

Life or fixed-term annuities transacted by insurers are assimilated to life insurance but remain also governed by the chapter on Annuities. However, the rules in this chapter relating to unseizability apply to such annuities with priority.

1991, c. 64, s. 2393.

2394. Clauses of accident and sickness insurance which are accessory to a contract of life insurance and clauses of life insurance which are accessory to a contract of accident and sickness insurance are governed by the rules governing the principal contract.

1991, c. 64, s. 2394.

2395. Damage insurance protects the insured from the consequences of an event that may adversely affect his patrimony.

1991, c. 64, s. 2395.

2396. Damage insurance includes property insurance, the object of which is to indemnify the insured for material loss, and liability insurance, the object of which is to protect the insured against the pecuniary consequences of the liability he may incur for damage to a third person by reason of an injurious act.

1991, c. 64, s. 2396.

2397. The contract of reinsurance has effect only between the insurer and the reinsurer.

1991, c. 64, s. 2397.

§2. — *Formation and content of the contract*

2398. A contract of insurance is formed upon acceptance by the insurer of the application of the client.

1991, c. 64, s. 2398.

2399. The policy is the document evidencing the existence of the contract of insurance.

In addition to the names of the parties to the contract and the names of the persons to whom the insured sums are payable or, if those persons are not determined, a means to identify them, the object of the insurance shall be set out in the policy, together with the amount of coverage, the nature of the risks insured, the time from which the risks are covered and the

term of the coverage as well as the amount and rate of the premiums and the dates on which they are due.

1991, c. 64, s. 2399.

2400. In non-marine insurance, the insurer shall remit the policy to the client, together with a copy of any application made in writing by the client or on his behalf.

In case of discrepancy between the policy and the application, the latter prevails unless the insurer has, in a separate document, indicated the particulars in respect of which there is discrepancy to the client.

1991, c. 64, s. 2400.

2401. In group insurance, the insurer issues the group insurance policy to the client and remits to him the insurance certificates, which he shall distribute to the participants.

Participants and beneficiaries may examine and make copies of the policy at the place of business of the client and, in case of discrepancies between the policy and the insurance certificate, they may invoke either one according to their interest.

1991, c. 64, s. 2401.

2402. In non-marine insurance, any general clause whereby the insurer is released from his obligations if the law is violated is deemed not written, unless the violation is an indictable offence.

Any clause of a policy whereby the insured consents, in case of loss, to effect an assignment of claim to his insurer that would result in granting his insurer more rights than he would have under the rules on subrogation is also deemed not written.

1991, c. 64, s. 2402.

2403. Subject to the special provisions on marine insurance, the insurer may not invoke conditions or representations not written in the contract.

1991, c. 64, s. 2403.

2404. In insurance of persons, the insurer may not invoke any exclusions or clauses of reduction of coverage except those clearly indicated under an appropriate heading.

1991, c. 64, s. 2404.

2405. In non-marine insurance, changes to the contract made by the parties are evidenced by riders attached to the policy.

Any rider stipulating a reduction of the insurer's liability or an increase in the insured's obligations, other than an increased premium, has no effect unless the policyholder consents to the change in writing.

Where such a change is made upon renewal of the contract, the insurer shall indicate it clearly to the insured in a separate document from the rider which stipulates it. The change is presumed to be accepted by the insured thirty days after receipt of the document.

1991, c. 64, s. 2405.

2406. The representations of a participant in group insurance may be invoked against him only if the insurer has furnished him with a copy of them.

1991, c. 64, s. 2406.

2407. A certificate of participation in a mutual association may establish the rights and obligations of the members by reference to the articles of the association, but only the constituting instrument and those by-laws which are specifically indicated in the certificate may be invoked against the members.

Every member is entitled to a copy of the articles of the association in force.

1991, c. 64, s. 2407.

§3. — *Representations and warranties of insured in non-marine insurance*

2408. The client, and the insured if the insurer requires it, is bound to represent all the facts known to him which are likely to materially influence an insurer in the setting of the premium, the appraisal of the risk or the decision to cover it, but he is not bound to represent facts known to the insurer or which from their notoriety he is presumed to know, except in answer to inquiries.

1991, c. 64, s. 2408.

2409. The obligation respecting representations is deemed properly met if the representations are such as a normally provident insured would make, if they were made without material concealment and if the facts are substantially as represented.

1991, c. 64, s. 2409.

2410. Subject to the provisions on statement of age and risk, any misrepresentation or concealment of relevant facts by either the client or the insured nullifies the contract at the instance of the insurer, even in respect of losses not connected with the risks so misrepresented or concealed.

1991, c. 64, s. 2410.

2411. In damage insurance, unless the bad faith of the client is established or unless it is established that the insurer would not have covered the risk if he had known the true facts, the insurer remains liable towards the insured for such proportion of the indemnity as the premium he collected bears to the premium he should have collected.

1991, c. 64, s. 2411.

2412. A breach of warranty aggravating the risk suspends the coverage. The suspension ceases upon the acquiescence of the insurer or the remedy of the breach.

1991, c. 64, s. 2412.

2413. Where the representations contained in the application for insurance have been entered or suggested by the representative of the insurer or by an insurance broker, proof may be made by testimony that they do not correspond to what was actually represented.

1991, c. 64, s. 2413.

§4. — *Special provision*

2414. Any clause in a non-marine insurance contract which grants the client, the insured, the participant, the beneficiary or the policyholder fewer rights than are granted by the provisions of this chapter is null.

Any stipulation which derogates from the rules on insurable interest or, in liability insurance, from those protecting the rights of injured third persons is also null.

1991, c. 64, s. 2414.

SECTION II

INSURANCE OF PERSONS

§1. — *Content of policy*

2415. In addition to the particulars prescribed for policies generally, an indication shall be made, where applicable, in a policy of insurance of persons, of the name of the insured or a means to identify him, the time limits for payment of premiums, the right of the holder to participate in the profits, the method and table according to which the surrender value is established and the rights relating to the surrender value of or advances on the policy.

The conditions of reinstatement, the right to convert the insurance, the terms and conditions of payment of sums due and the period during which benefits are payable shall also be set out in the policy, where applicable.

1991, c. 64, s. 2415; 2002, c. 19, s. 15.

2416. In an accident and sickness policy, the insurer shall set out, expressly and in clearly legible characters, the nature of the coverage stipulated in it.

Where the contract provides coverage against disability, he shall set out in the same manner the terms and conditions of payment of the indemnities and the nature and extent of the disability covered. Failing clear indication as to the nature and extent of the disability covered, the inability to carry on one's usual occupation constitutes the disability.

1991, c. 64, s. 2416.

2417. In accident and sickness insurance, the insurer may not, except in case of fraud, exclude or reduce the coverage by reason of a disease or ailment disclosed in the application except under a clause referring by name to the disease or ailment.

Except in the case of fraud, an insurer may not, by a general clause, exclude or limit the coverage by reason of a disease or ailment not disclosed in the application unless the disease or ailment appears within the first two years of the insurance.

1991, c. 64, s. 2417.

§2. — *Insurable interest*

2418. In individual insurance, a contract is null if at the time the contract is made the client has no insurable interest in the life or health of the insured, unless the insured consents in writing.

Subject to the same reservation, the assignment of such a contract is null if the assignee does not have the required interest at the time of the assignment.

1991, c. 64, s. 2418.

2419. A person has an insurable interest in his own life and health and in the life and health of his spouse, of his descendants and the descendants of his spouse, or of persons who contribute to his support or education.

He also has an interest in the life and health of his employees and staff or of persons in whose life and health he has a pecuniary or moral interest.

1991, c. 64, s. 2419.

§3. — *Representation of age and risk*

2420. Misrepresentation of the age of the insured does not entail the nullity of the insurance. In such circumstances, the sum insured is adjusted in such proportion as the premium collected bears to the premium that should have been collected.

In accident and sickness insurance, however, the insurer may elect to adjust the premium to make it correspond to the premium applicable to the true age of the insured.

1991, c. 64, s. 2420.

2421. In life insurance, the insurer may bring an action for the annulment of the contract if, at the time of formation of the contract, the age of the insured exceeds the limits fixed by the insurer's rates.

The insurer may bring the action only within three years of the making of the contract,

during the life-time of the insured and within sixty days after becoming aware of the error.

1991, c. 64, s. 2421.

2422. In accident and sickness insurance, the true age is the determining factor in cases where the commencement or termination of the insurance depends on the age of the insured.

In life insurance, the true age is also the determining factor for termination of a contract which is to terminate at a specified age, where the misrepresentation of age is discovered before the death of the insured.

1991, c. 64, s. 2422.

2423. In group insurance, misrepresentation or concealment by a participant as to age or risk affects only the insurance of the persons who are the subject of the misrepresentation or concealment.

1991, c. 64, s. 2423.

2424. In the absence of fraud, misrepresentation or concealment as to risk does not justify the annulment or reduction of insurance which has been in force for two years.

This rule does not apply in the case of disability insurance if the disability begins during the first two years of the insurance.

1991, c. 64, s. 2424.

§4. — *Effective date*

2425. Life insurance takes effect when the application is accepted by the insurer, provided that it is accepted without modification, that the initial premium has been paid, and that there has been no change in the insurability of the risk since the application was signed.

1991, c. 64, s. 2425.

2426. Accident and sickness insurance takes effect upon the delivery of the policy to the client, even if it is delivered by a person other than a representative of the insurer.

A policy issued in accordance with the application and given to a representative of the insurer for unconditional delivery to the client is also validly delivered.

1991, c. 64, s. 2426.

§5. — *Premiums, advances and reinstatement*

2427. In life insurance, the policyholder is entitled to thirty days for the payment of each premium, except the initial premium; the insurance remains in force during the thirty days, but failure to pay the premium within that period terminates the insurance.

The period runs concurrently with any other period granted by the insurer, but it may not be reduced by agreement.

1991, c. 64, s. 2427.

2428. When payment is made by bill of exchange, it is deemed made only if the bill is honoured when first presented.

The payment is also deemed made when the bill is not honoured by reason of the death of the person who issued the bill of exchange, subject to payment of the premium.

1991, c. 64, s. 2428.

2429. The premium does not bear interest during the period allowed for payment, except in group insurance.

Where the insurer is entitled to interest on a premium due, the interest may not be at a higher rate than that fixed by the regulations made to that effect by the Government.

1991, c. 64, s. 2429.

2430. No accident and sickness insurance contract that is in force may be cancelled for non-payment of the premium unless fifteen day's prior notice in writing is given to the debtor.

1991, c. 64, s. 2430.

2431. The insurer is bound to reinstate individual life insurance that has been cancelled for non-payment of the premium if the policyholder applies to him therefor within two years from the date of the cancellation and establishes that the insured still meets the conditions required to be insured under the cancelled contract. The policyholder is bound in that case to pay the overdue premiums and repay the advances he has obtained on the policy, with interest at a rate not exceeding the rate fixed by the regulations made to that effect by the Government.

The insurer is not bound by the first paragraph if the surrender value has been paid or if the policyholder has elected for a reduction or extension of coverage.

1991, c. 64, s. 2431.

2432. Any amount payable for the reinstatement of a contract may be made out of advances receivable on the policy up to the sum stipulated in the contract.

1991, c. 64, s. 2432.

2433. The insurer may require the payment of overdue premiums when settling a claim under a group life insurance contract or an accident and sickness insurance contract.

The insurer may, for any personal insurance contract, deduct the amount of any overdue premium out of the benefits payable.

1991, c. 64, s. 2433.

2434. Upon the reinstatement of a contract of insurance, the two year period during which the insurer may bring an action for the annulment of the contract or reduction of coverage by reason of misrepresentation or concealment relating to the risk, or by reason of the application of a clause of exclusion of coverage in case of the suicide of the insured, runs again.

1991, c. 64, s. 2434.

§6. — *Performance of the contract of insurance*

2435. The holder of an accident and sickness policy or the beneficiary or insured shall give written notice of loss to the insurer within thirty days of acquiring knowledge of it. He shall also, within ninety days, transmit all the information to the insurer that he may reasonably expect as to the circumstances and extent of the loss.

The person entitled to the payment is not prevented from receiving it if he proves that it was impossible for him to act within the prescribed time, provided the notice is sent to the insurer within one year of the loss.

1991, c. 64, s. 2435.

2436. The insurer is bound to pay the sums insured and the other benefits provided in the policy, in accordance with the conditions of the policy, within thirty days after receipt of the required proof of loss.

In accident and sickness insurance, the period is of sixty days, unless the policy covers losses of income due to disability.

1991, c. 64, s. 2436.

2437. Where the insurance covers losses of income due to disability and the policy stipulates a waiting period, the thirty day period for payment of the first indemnity runs from the expiry of the waiting period.

Subsequent payments are made at intervals of not more than thirty days, provided that proof is furnished to the insurer on request.

1991, c. 64, s. 2437.

2438. The insured shall submit to a medical examination when the insurer is entitled to require it owing to the nature of the disability.

1991, c. 64, s. 2438.

2439. In accident and sickness insurance, where an aggravation of the occupational risk has lasted for six months or more, the insurer may reduce the indemnity provided under the policy to the sum payable for the new risk according to the premium stipulated in the policy.

Where there is a reduction of the occupational risk, the insurer is bound, from receipt of a notice to that effect, to reduce the rate of the premium or to extend the insurance by applying the rate corresponding to the new risk, as the client may elect.

1991, c. 64, s. 2439.

2440. The heirs of the beneficiary of an insurance contract may require the insurer to make a single lump sum payment to them of any sums payable by instalments.

1991, c. 64, s. 2440.

2441. The insurer may not refuse payment of the sums insured by reason of the suicide of the insured unless he stipulated an express exclusion of coverage in such a case and, even then, the stipulation is without effect if the suicide occurs after two years of uninterrupted insurance.

1991, c. 64, s. 2441.

2442. A contract of insurance for funeral expenses whereby a person undertakes, for a premium paid in a single payment or by instalments, to provide services or goods upon the death of another person, to pay funeral expenses or to set aside a sum of money for that purpose is null.

Only the person who paid the premium or instalments or the Inspector General of Financial Institutions acting on his behalf may bring an action for the annulment of the contract or recovery of the premium.

1991, c. 64, s. 2442.

2443. An attempt on the life of the insured by the policyholder entails, by operation of law, cancellation of the insurance and payment of the surrender value.

An attempt on the life of the insured by a person other than the policyholder entails forfeiture only in respect of that person's right to the coverage.

1991, c. 64, s. 2443.

2444. The benefits established in favour of a member of a mutual benefit association, or of his or her married or civil union spouse, ascendants or descendants are unseizable either for debts of the member or for debts of the beneficiaries.

1991, c. 64, s. 2444; 2002, c. 6, s. 55.

§7. — Designation of beneficiaries and subrogated policyholders

I — Conditions of designation

2445. The sum insured may be payable to the policyholder, the participant or a specified beneficiary.

In individual insurance, the holder of a policy on the life of a third person may designate a subrogated policyholder to replace him upon his death; he may also designate several subrogated policyholders and specify the order in which they will succeed to any preceding policyholder.

The proceeds of a life insurance policy may not be payable to bearer.

1991, c. 64, s. 2445.

2446. The designation of beneficiaries or of subrogated policyholders is made in the policy or in another writing which may or may not be in the form of a will.

1991, c. 64, s. 2446.

2447. The beneficiary or the subrogated policyholder need not exist at the time of designation or be then expressly determined; it is sufficient that at the time his right becomes exigible he exist or, if he is conceived but not born, that he be born alive and viable and that his quality be recognized.

The designation of a beneficiary is presumed made on the condition that the beneficiary exists at the time the proceeds of the insurance become exigible; the designation of the subrogated policyholder is presumed made on the condition that the person so designated exists at the death of the preceding policyholder.

1991, c. 64, s. 2447.

2448. Where the insured and the beneficiary die at the same time or in circumstances which make it impossible to determine which of them died first, the insured is, for the purposes of the insurance, deemed to have survived the beneficiary. Where the insured dies intestate, leaving no heir within the degrees of succession, the beneficiary is deemed to have survived the insured. In similar circumstances, the preceding policyholder is deemed to have survived the subrogated policyholder.

1991, c. 64, s. 2448.

2449. The designation in a writing other than a will, by the policyholder or participant, of his or her married or civil union spouse as beneficiary is irrevocable unless otherwise stipulated. The designation of any other person as beneficiary is revocable unless otherwise stipulated in the policy or in a separate writing other than a will. The designation of a person as subrogated policyholder is always revocable.

Where revocation is permitted, it may only result from a writing but it need not be express.

1991, c. 64, s. 2449; 2002, c. 6, s. 56.

2450. 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; such a designation or revocation is null, however, if the will is revoked.

A designation or revocation made in a will does not avail against another designation or revocation subsequent to the signing of the will. Nor does it avail against a designation prior to the signing of the will unless the will refers to the insurance policy in question or unless the intention of the testator in that respect is manifest.

1991, c. 64, s. 2450.

2451. Regardless of the terms used, every designation of beneficiaries remains revocable until received by the insurer.

1991, c. 64, s. 2451.

2452. Designations and revocations may be set up against the insurer only from the day he receives them; where several irrevocable designations of beneficiaries are made separately and at different times, they are given priority according to their dates of receipt by the insurer.

The insurer is discharged by payment in good faith in accordance with these rules to the last known person entitled to it.

1991, c. 64, s. 2452.

II — Effects of designation

2453. Beneficiaries and subrogated policyholders are the creditors of the insurer but the insurer may set up against them the causes of nullity or forfeiture that may be invoked against the policyholder or participant.

1991, c. 64, s. 2453.

2454. The policyholder is entitled to the profits and other benefits conferred on him by the contract even if the beneficiary has been designated irrevocably.

Profits and benefits shall be applied by the insurer to any premium due to keep the insurance in force.

In either case, the contract may provide otherwise.

1991, c. 64, s. 2454.

2455. Sums insured payable to a beneficiary do not form part of the succession of the insured. Similarly, a contract transferred to a subrogated policyholder does not form part of

the succession of the preceding policyholder.

1991, c. 64, s. 2455.

2456. Insurance payable to the succession or to the assigns, heirs, liquidators or other legal representatives of a person pursuant to a stipulation in which those terms or similar terms are employed forms part of the succession of such person.

The rules respecting representation of heirs do not apply to insurance matters but those respecting accretion to the benefit of particular legatees apply among co-beneficiaries or subrogated co-policyholders.

1991, c. 64, s. 2456.

2457. Where the designated beneficiary of the insurance is the married or civil union spouse, descendant or ascendant of the policyholder or of the participant, the rights under the contract are exempt from seizure until the beneficiary receives the sum insured.

1991, c. 64, s. 2457; 2002, c. 6, s. 57.

2458. A stipulation of irrevocable designation binds the policyholder even if the designated beneficiary has no knowledge of it. As long as the designation remains irrevocable, the rights conferred by the contract on the policyholder, participant or beneficiary are exempt from seizure.

1991, c. 64, s. 2458.

2459. Separation from bed and board does not affect the rights of the spouse, whether a beneficiary or a subrogated policyholder, but the court may declare them revocable or lapsed when granting a separation.

Divorce or nullity of marriage or the dissolution or nullity of a civil union causes any designation of the spouse as beneficiary or subrogated policyholder to lapse.

1991, c. 64, s. 2459; 2002, c. 6, s. 58.

2460. Even if the beneficiary has been designated irrevocably, the policyholder and the participant may dispose of their rights, subject to the rights of the beneficiary.

1991, c. 64, s. 2460.

§8. — *Assignment and hypothecation of a right under a contract of insurance*

2461. The assignment or hypothecation of a right resulting from a contract of insurance may not be set up against the insurer, the beneficiary or third persons until the insurer receives notice thereof.

Where a right under a contract of insurance is subject to several assignments or hypothecations priority is determined by the date on which the insurer is notified.

1991, c. 64, s. 2461.

2462. The assignment of insurance confers on the assignee all the rights and obligations of the assignor and entails the revocation of any revocable designation of a beneficiary and of any designation of a subrogated policyholder.

The hypothecation of a right arising out of a contract of insurance confers on the hypothecary creditor only a right to the balance of the debt, interest and accessories and entails revocation of the revocable designation of the beneficiary or the subrogated policyholder only in respect of those amounts.

1991, c. 64, s. 2462.

SECTION III

DAMAGE INSURANCE

§1. — Provisions common to property insurance and liability insurance

I — Principle of indemnity

2463. In damage insurance, the insurer is obliged to compensate for any injury suffered at the time of the loss but only up to the amount of the insurance.

1991, c. 64, s. 2463.

2464. The insurer is liable to compensate for injury resulting from superior force or the fault of the insured, unless an exclusion is expressly and restrictively stipulated in the policy. However, the insurer is never liable to compensate for injury resulting from the insured's intentional fault. Where there is more than one insured, the obligation of coverage remains in respect of those insured who have not committed an intentional fault.

Where the insurer is liable for injury caused by a person for whose acts the insured is liable, the obligation of coverage subsists regardless of the nature or gravity of the fault committed by that person.

1991, c. 64, s. 2464.

2465. The insurer is not liable to indemnify for injury resulting from natural loss, diminution or losses sustained by the property arising from an inherent defect in or the nature of the property.

1991, c. 64, s. 2465.

II — Material change in risk

2466. The insured shall promptly notify the insurer of any change that increases the risks stipulated in the policy and that results from events within his control if it is likely to

materially influence an insurer in setting the rate of the premium, appraising the risk or deciding to continue to insure it.

If the insured fails to discharge his obligation, the provisions of article 2411 apply, adapted as required.

1991, c. 64, s. 2466.

2467. On being notified of any material change in the risk, the insurer may cancel the contract or propose, in writing, a new rate of premium. Unless the new premium is accepted and paid by the insured within thirty days of the proposal, the policy ceases to be in force.

If the insurer continues to accept the premiums or if he pays an indemnity after a loss, he is deemed to have acquiesced in the change notified to him.

1991, c. 64, s. 2467.

2468. The lack of occupation of a residence does not constitute a change which increases the risk if it does not last more than thirty consecutive days or if the insurance relates to a second residence designated as such.

Nor does the admission of tradesmen into the residence to do maintenance or repair work for a period of not more than thirty days constitute a change which increases the risk.

1991, c. 64, s. 2468.

III — Payment of premium

2469. The insurer is entitled to the premium only from the time the risk begins, and only for its duration if the risk disappears completely as a result of an event that is not covered by the insurance.

The insurer may bring an action for payment of the premium or deduct it from the indemnity payable.

1991, c. 64, s. 2469.

IV — Notice of loss and payment of indemnity

2470. The insured shall notify the insurer of any loss which may give rise to an indemnity, as soon as he becomes aware of it. Any interested person may give such notice.

An insurer who has not been so notified may, where he sustains injury therefrom, set up against the insured any clause of the policy providing for forfeiture of the right to indemnity in such a case.

1991, c. 64, s. 2470.

2471. At the request of the insurer, the insured shall inform the insurer as soon as possible

of all the circumstances surrounding the loss, including its probable cause, the nature and extent of the damage, the location of the insured property, the rights of third persons, and any concurrent insurance; he shall also furnish him with vouchers and attest under oath to the truth of the information.

Where, for a serious reason, the insured is unable to fulfil such obligation, he is entitled to a reasonable time in which to do so.

If the insured fails to fulfil his obligation, any interested person may do so on his behalf.

1991, c. 64, s. 2471.

2472. Any deceitful representation entails the loss of the right of the person making it to any indemnity in respect of the risk to which the representation relates.

However, if the occurrence of the event insured against entails the loss of both movable and immovable property or of both property for occupational use and personal property, forfeiture is incurred only with respect to the class of property to which the representation relates.

1991, c. 64, s. 2472.

2473. The insurer is bound to pay the indemnity within sixty days after receiving the notice of loss or, at his request, the relevant information and vouchers.

1991, c. 64, s. 2473.

2474. The insurer is subrogated to the rights of the insured against the person responsible for the loss, up to the amount of indemnity paid. The insurer may be fully or partly released from his obligation towards the insured where, owing to any act of the insured, he cannot be so subrogated.

The insurer may not be subrogated against persons who are members of the household of the insured.

1991, c. 64, s. 2474.

V — Assignment

2475. A contract of insurance may be assigned only with the consent of the insurer and in favour of a person who has an insurable interest in the insured property.

1991, c. 64, s. 2475.

2476. Upon the death or bankruptcy of the insured or the assignment of his interest in the insurance to a co-insured, the insurance continues in favour of the heir, trustee in bankruptcy or remaining insured, subject to his performing the obligations that were incumbent upon the insured.

1991, c. 64, s. 2476.

VI — Cancellation of the contract

2477. The insurer may cancel the contract on prior notice which shall be sent to every insured named in the policy. The cancellation takes place fifteen days after notice is received by the insured at his last known address.

A contract of insurance may also be cancelled on mere notice in writing given to the insurer by each of the insured named in the policy. The cancellation takes place upon receipt of the notice.

The insured named in the policy may, however, give one or more of their number the mandate of receiving or sending the notice of cancellation.

1991, c. 64, s. 2477.

2478. Where the right to the indemnity has been hypothecated and notice has been given to the insurer, the contract may not be cancelled or amended to the detriment of the hypothecary creditor unless the insurer has given him prior notice of at least fifteen days.

1991, c. 64, s. 2478.

2479. Where the insurance is cancelled the insurer is entitled to only the earned portion of the premium, computed day by day if the contract is cancelled by the insurer, or at the short-term rate if cancelled by the insured; the insurer is bound to refund any overpayment of premium.

1991, c. 64, s. 2479.

§2. — *Property insurance*

I — Content of policy

2480. In addition to the particulars prescribed for insurance policies generally, an indication shall be made in a property insurance policy of any exclusion of coverage not resulting from the ordinary meaning of the words or any limitation of coverage applying to specified objects or classes of objects, specifying the conditions on which the contract may be cancelled by the insured, as well as those on which the insurance may be reinstated or continued after a loss.

1991, c. 64, s. 2480.

II — Insurable interest

2481. A person has an insurable interest in a property where the loss or deterioration of the property may cause him direct and immediate damage.

It is necessary that the insurable interest exist at the time of the loss but not necessary that the same interest have existed throughout the duration of the contract.

1991, c. 64, s. 2481.

2482. Future property and incorporeal property may be the subject of a contract of insurance.

1991, c. 64, s. 2482.

2483. Property insurance may be contracted on behalf of whomever it may concern. The clause is valid as insurance for the benefit of the policyholder or as a stipulation for a third person in favour of the beneficiary of the clause, whether known or contingent.

The policyholder alone is liable for payment of the premium to the insurer; any exception that the insurer may set up against him may also be set up against the beneficiary of the contract, whoever he may be.

1991, c. 64, s. 2483.

2484. The insurance of a property in which the insured has no insurable interest is null.

1991, c. 64, s. 2484.

III — Extent of coverage

2485. In fire insurance, the insurer is bound to repair any damage which is an immediate consequence of fire or combustion, whatever the cause, including damage to the property during removal or that caused by the means employed to extinguish the fire, subject to the exceptions specified in the policy. The insurer is also liable for the disappearance of insured things during the fire, unless he proves that the disappearance is due to theft which is not covered.

The insurer is not liable for damage caused solely by excessive heat from a heating apparatus or by any process involving the application of heat where there is no fire or commencement of fire but, even where there is no fire, the insurer is liable for damage caused by lightning or the explosion of fuel.

1991, c. 64, s. 2485.

2486. An insurer who insures a property against fire is not liable for damage due to fires or explosions caused by foreign or civil war, riot or civil disturbance, nuclear explosion, volcanic eruption, earthquake or other cataclysm.

1991, c. 64, s. 2486.

2487. The insurer is liable for damage to the insured property caused by measures taken to save or protect it.

1991, c. 64, s. 2487.

2488. 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.

1991, c. 64, s. 2488.

2489. The insurance of a furnished residence and that of movable property in general covers every class of movable property except what is expressly excluded or what is insured for only a limited amount.

1991, c. 64, s. 2489.

IV — Amount of insurance

2490. The value of the insured property is determined in the ordinary manner unless a special valuation formula is contained in the policy.

1991, c. 64, s. 2490.

2491. In unvalued policies, the amount of insurance does not make proof of the value of the insured property.

In valued policies, the agreed value makes complete proof, between the insurer and the insured, of the value of the insured property.

1991, c. 64, s. 2491.

2492. A contract made without fraud for an amount greater than the value of the insured property is valid up to that value; the insurer has no right to charge any premium for the excess but premiums paid or due remain vested in him.

1991, c. 64, s. 2492.

2493. The insurer may not refuse to cover a risk for the sole reason that the amount of insurance is less than the value of the insured property. In such a case, he is released by paying the amount of the insurance in the event of total loss or a proportional indemnity in the event of partial loss.

1991, c. 64, s. 2493.

V — Losses, and payment of indemnity

2494. Subject to the rights of preferred and hypothecary creditors, the insurer may reserve the right to repair, rebuild or replace the insured property. He is then entitled to salvage and may take over the property.

1991, c. 64, s. 2494.

2495. The insured may not abandon the damaged property if there is no agreement to that

effect.

The insured shall facilitate the salvage and inspection of the insured property by the insurer. He shall, in particular, permit the insurer and his representatives to visit the premises and examine the insured property.

1991, c. 64, s. 2495.

2496. Any person who, without fraud, is insured by several insurers, under several policies, for the same interest and against the same risk so that the total amount of indemnity that would result from the separate performance of such policies would exceed the loss incurred may be indemnified by the insurer or insurers of his choice, each being liable only for the amount he has contracted for.

No clause suspending all or part of the performance of the contract by reason of plurality of insurance may be set up against the insured.

Unless otherwise agreed, the indemnity is apportioned among the insurers in proportion to the share of each in the total coverage, except in respect of individual insurance, which constitutes first line insurance.

1991, c. 64, s. 2496.

2497. Notwithstanding any contrary provision, the indemnities due to the insured are apportioned among the prior creditors or creditors holding hypothecs on the damaged property, according to their rank and without express delegation, upon mere notice and proof by them.

However, payments made in good faith before the notice discharge the insurer.

1991, c. 64, s. 2497.

§3. — *Liability insurance*

2498. Civil liability, whether contractual or extracontractual, may be the subject of a contract of insurance.

1991, c. 64, s. 2498.

2499. In addition to the particulars prescribed for insurance policies generally, in a liability insurance policy the relation between persons and property and between persons and acts which entails liability shall be specified, together with the amounts of and exclusions from coverage, and the compulsory or optional nature of the insurance and the direct and indirect beneficiaries of it.

1991, c. 64, s. 2499.

2500. The proceeds of the insurance are applied exclusively to the payment of third persons injured.

1991, c. 64, s. 2500.

2501. An injured third person may bring an action directly against the insured or against the insurer, or against both.

The option chosen in this respect by the third person injured does not deprive him of his other recourses.

1991, c. 64, s. 2501.

2502. The insurer may set up against the injured third person any grounds he could have invoked against the insured at the time of the loss, but not grounds pertaining to facts that occurred after the loss; the insurer has a right of action against the insured in respect of facts that occurred after the loss.

1991, c. 64, s. 2502.

2503. The insurer is bound to take up the interest of any person entitled to the benefit of the insurance and assume his defence in any action brought against him.

Costs and expenses resulting from actions against the insured, including those of the defence, and interest on the proceeds of the insurance are borne by the insurer over and above the proceeds of the insurance.

1991, c. 64, s. 2503.

2504. No transaction made without the consent of the insurer may be set up against him.

1991, c. 64, s. 2504.

SECTION IV

MARINE INSURANCE

§1. — *General provisions*

2505. In addition to providing coverage against the losses incident to marine adventure, marine insurance may cover the risks of any adventure analogous to a marine adventure, land risks which are incidental to a marine adventure or risks incident to the building, repair and launch of a ship.

1991, c. 64, s. 2505.

2506. In particular, there is a marine adventure where any ship, goods or other movables are exposed to maritime perils or where by reason of such perils, civil liability may be incurred by any person interested in, or responsible for, insurable property.

There is also a marine adventure where the earning or acquisition of any freight, passage

money, commission or other pecuniary benefit, or the security for any advances, loan or disbursements, is endangered by the exposure of insurable property to maritime perils.

1991, c. 64, s. 2506.

2507. Maritime perils include the perils designated by the policy and the perils consequent on or incidental to navigation such as perils of the sea, piracy, restraints, jettisons and barratry, and the capture, restraint, seizure or detainment of the ship or other insurable property by a government.

1991, c. 64, s. 2507.

2508. The insurance of a ship covers the hull of the ship as well as her outfit, stores and provisions, the machinery and boilers and, in the case of a ship engaged in a special trade, the ordinary fittings requisite for that trade, and, if owned by the insured, the bunkers and engine stores.

1991, c. 64, s. 2508.

2509. Insurance on freight covers the profit derivable by a shipowner from the employment of his ship to carry his own goods or other movables as well as freight payable by a third party, but does not include passage money.

1991, c. 64, s. 2509.

2510. The insurance on movables covers all movables not covered by the insurance on the ship.

1991, c. 64, s. 2510.

§2. — *Insurable interest*

I — Necessity of interest

2511. It is not necessary that the insurable interest exist when the contract is made but it is necessary that it exist at the time of the loss.

The acquisition of an interest after a loss does not validate the insurance. However, where the property is insured "lost or not lost", the insurance is valid although the insured may not have acquired his interest until after the loss provided that, at the time of making the contract, the insured was not aware of the loss.

1991, c. 64, s. 2511.

2512. Every contract of marine insurance by way of gaming or wagering is absolutely null.

There is a gaming or wagering contract where the insured has no insurable interest and the contract is entered into with no expectation of acquiring such an interest.

A contract of marine insurance is deemed to be a gaming or wagering contract where the policy is made " interest or no interest" or " without further proof of interest than the policy itself", or " without benefit of abandonment to the insurer" where there is in fact a possibility of abandonment.

1991, c. 64, s. 2512.

II — Instances of insurable interest

2513. Insurable interest exists where a person is interested in a marine adventure and, in particular, where the relation between that person and the adventure or the insurable property is such that he may incur liability in respect thereof or derive benefit from the safety or due arrival of the insurable property or be prejudiced in case of detainment, loss or damage.

1991, c. 64, s. 2513.

2514. A contingent or partial insurable interest subject to annulment may be the subject of a contract of marine insurance.

1991, c. 64, s. 2514.

2515. Insurable interest exists, in particular, for the insurer in respect of the risk insured, for the insured in respect of the charges of insurance effected and the solvency of his insurer and for the master or any member of the crew of a ship in respect of his wages.

Insurable interest also exists for the person advancing freight so far as it is not repayable in case of loss, the purchaser of goods even where he is entitled to reject the goods or treat them as at the seller's risk, and for the hypothecary debtor in respect of the full value of the hypothecated property, and the hypothecary creditor up to the amount of his claim.

1991, c. 64, s. 2515.

III — Extent of insurable interest

2516. A person having an interest in the insured property may insure on behalf and for the benefit of other persons interested as well as for his own benefit.

1991, c. 64, s. 2516.

2517. The owner of insurable property has an insurable interest in respect of the full value thereof, notwithstanding that some third person might have agreed, or be liable, to indemnify him in case of loss.

1991, c. 64, s. 2517.

§3. — *Measure of insurable value*

2518. The insurable value is the amount at the risk of the insured when the policy attaches.

The insurable value includes the charges of insurance on the property.

1991, c. 64, s. 2518.

2519. In insurance on ship, the insurable value is the value of the ship plus the money advanced for seamen's wages and any other disbursements incurred to make the ship fit for the voyage or adventure contemplated by the policy.

In insurance on freight, whether paid in advance or otherwise, the insurable value is the gross amount of the freight at the risk of the insured; in insurance on goods, the insurable value is the cost price of the goods plus the expenses of and incidental to shipping.

1991, c. 64, s. 2519.

§4. — Contract and policy

I — Subscription

2520. The subscription of each insurer constitutes a distinct contract with the insured.

1991, c. 64, s. 2520.

II — Kinds of contract

2521. A contract may be for a voyage or for a period of time; a contract for both voyage and time may be included in the same policy.

A contract may be valued, unvalued or floating.

1991, c. 64, s. 2521.

2522. A voyage contract covers the insured from one place to another or others and, where specified in the policy, at the place of departure.

A time contract covers the insured for the period of time specified in the policy.

1991, c. 64, s. 2522.

2523. A valued contract is a contract which specifies the agreed value of the insured property.

In the absence of fraud, the value fixed by the policy is, as between the insurer and the insured, conclusive of the value of the insured property whether the loss be total or partial, but is not conclusive for the purpose of determining whether there has been a constructive total loss.

1991, c. 64, s. 2523.

2524. An unvalued contract is a contract which does not specify the value of the insured property but, without exceeding the amount of coverage, leaves the insurable value to be subsequently ascertained.

Where a declaration of the value of an insured property is not made until after notice of loss or arrival, the contract is treated as an unvalued contract as regards that property, unless the policy provides otherwise.

1991, c. 64, s. 2524.

2525. A floating contract is a contract which describes the insurance in general terms and leaves the necessary particulars such as the name of the ship to be defined by subsequent declaration.

1991, c. 64, s. 2525.

2526. Subsequent declarations may be made by indorsement on the policy or in other customary manner but, where they pertain to goods to be dispatched or shipped, they shall, unless the policy provides otherwise, be made in the order of dispatch or shipment, state the value of the goods and comprise all consignments within the terms of the policy.

Omissions or erroneous declarations made in good faith may be rectified even after loss or arrival.

1991, c. 64, s. 2526.

III — Content of the policy

2527. In addition to the name of the insurer and of the insured or of the person who effects the insurance on his behalf, in a marine insurance policy, the property insured and the risk insured against shall be specified, together with the sums insured, the voyage or period of time covered by the insurance, the date and place of subscription, the amount and rate of the premiums and the dates on which they become due.

1991, c. 64, s. 2527.

IV — Assignment of policy

2528. A marine policy may be assigned either before or after loss.

A marine policy may be assigned by indorsement on the policy or in other customary manner.

1991, c. 64, s. 2528.

2529. Where the insured has alienated or lost his interest in the insured property, and has

not, before or at the time of so doing expressly or impliedly agreed to assign the policy, he may not subsequently assign the policy.

1991, c. 64, s. 2529.

2530. The alienation of the insured property does not assign the insurance except in the case of transmission by operation of law or by succession.

1991, c. 64, s. 2530.

2531. The assignee may enforce his rights directly against the insurer but the insurer may make any defense arising out of the contract which he would have been entitled to make against the insured.

1991, c. 64, s. 2531.

V — Evidence and ratification of the contract

2532. A contract is inadmissible in evidence unless it is embodied in an insurance policy, but once the policy has been issued, customary memorandums of the contract such as the slip or covering note are admissible in evidence for the purpose of determining the actual terms of the contract and showing when the proposal was accepted.

1991, c. 64, s. 2532.

2533. Where a contract is effected in good faith on behalf of another person, that person may ratify it even after he is aware of a loss.

1991, c. 64, s. 2533.

§5. — *Rights and obligations of the parties as regards the premium*

2534. The insurer is not bound to issue the policy until payment or tender of the premium.

1991, c. 64, s. 2534.

2535. Where an insurance is effected at a premium to be arranged, and no arrangement is made, a reasonable premium is payable.

The same applies where an insurance is effected on the terms that an additional premium is to be arranged in a given event and that event happens but no arrangement is made.

1991, c. 64, s. 2535.

2536. Where a marine policy is effected on behalf of the insured by a broker, the broker is responsible to the insurer for the premium. In other cases, the insured is responsible.

1991, c. 64, s. 2536.

2537. The insurer is responsible to the insured for the amounts payable. In the event of a loss or return of premium, the insurer is responsible to the insured for such amounts whether or not he has collected the premium from the broker.

1991, c. 64, s. 2537.

2538. Where the consideration for the payment of the premium totally fails and there has been no fraud or illegality on the part of the insured, the premium is returnable to the insured.

Where the consideration for the payment of the premium is apportionable and there is a total failure of any apportionable part of the consideration, a proportionable part of the premium is, under the same conditions, returnable to the insured.

1991, c. 64, s. 2538.

2539. Where the policy is null or is cancelled by the insurer before the commencement of the risk, the premium is returnable provided there has been no fraud or illegality on the part of the insured; but if the risk is not apportionable, and has once attached, the premium is not returnable.

1991, c. 64, s. 2539.

2540. Where the insured property, or part thereof, has never been imperilled, the premium, or a proportionate part thereof, is returnable.

Where the property has been insured "lost or not lost" and has arrived in safety at the time when the contract is concluded, the premium is not returnable unless, at such time, the insurer knew of the safe arrival.

1991, c. 64, s. 2540.

2541. Where the insured has no insurable interest throughout the currency of the risk, the premium is returnable, provided the contract was not effected by way of gaming or wagering.

Where the insured has an interest subject to annulment which is terminated during the currency of the risk, the premium is not returnable.

1991, c. 64, s. 2541.

2542. Where the insured has over-insured under an unvalued contract, a proportionate part of the premium is returnable.

The same applies in the case of over-insurance resulting from several contracts, if effected without the knowledge of the insured. But if the contracts have become effective at different times, and any of the contracts has, at any time, borne the entire risk or if a claim has been paid by the insurer in respect of the full sum insured thereby, no premium is returnable in

respect of that contract.

1991, c. 64, s. 2542.

2543. The broker has a right of retention upon the policy for the amount of the premium and his charges in respect of effecting the policy.

Where the broker has dealt with a person as if that person were a principal, he also has a right of retention upon the policy in respect of any balance on any insurance account which may be due to him from such person, unless, when the debt was incurred, he had reason to believe that such person was only acting on behalf of another.

1991, c. 64, s. 2543.

2544. Where a policy effected by a broker acknowledges the receipt of the premium, the acknowledgement is, in the absence of fraud, conclusive as between the insurer and the insured, but not as between the insurer and the broker.

1991, c. 64, s. 2544.

§6. — *Disclosure and representations*

2545. A contract of marine insurance is a contract based upon the utmost good faith.

If the utmost good faith is not observed by either party, the other party may bring an action for the annulment of the contract.

1991, c. 64, s. 2545.

2546. The insured shall disclose to the insurer, before the formation of the contract, all circumstances known to him which would materially influence an insurer in fixing the premium, appreciating the risk or determining whether he will take it; the insured shall make only true representations.

Circumstances requiring disclosure include any communication made to or information received by the insured.

1991, c. 64, s. 2546.

2547. In the absence of inquiry, the insured need not disclose circumstances which diminish the risk and circumstances which it is superfluous to disclose by reason of an express or implied warranty.

Similarly, the insured need not disclose matters of common notoriety or circumstances which are known to the insurer or as to which information is waived by the insurer.

1991, c. 64, s. 2547.

2548. A representation as to a matter of fact is deemed true if the difference between what

is represented and what is actually correct would not materially influence the judgment of an insurer.

A representation as to a matter of expectation or belief is deemed true if it is made in good faith.

1991, c. 64, s. 2548.

2549. Where insurance is effected for an insured by a person acting on behalf of the insured, that person is subject to the same obligations as the insured with respect to representations and disclosures.

The person acting on behalf of the insured may not be held responsible for the non-disclosure of circumstances which come to the knowledge of the insured too late to be communicated to him.

1991, c. 64, s. 2549.

2550. The insured and the insurer as well as persons acting on their behalf are deemed to know every circumstance which, in the ordinary course of business, they ought to know.

1991, c. 64, s. 2550.

2551. A representation may be withdrawn or corrected before the formation of the contract.

1991, c. 64, s. 2551.

2552. If the insured fails to make a disclosure or if a representation made by him is untrue, the insurer may apply for annulment of the contract, even with respect to losses or damage not connected with the risks misrepresented or not disclosed.

1991, c. 64, s. 2552.

§7. — Warranties

2553. A warranty is an undertaking by the insured whereby he affirms or negatives the existence of a particular state of facts or promises that some particular thing will or will not be done or that some condition will be fulfilled.

The affirmation or negation of a particular state of facts necessarily implies that such state of facts will not vary.

1991, c. 64, s. 2553.

2554. A warranty shall be exactly complied with whether or not it may materially influence the judgment of an insurer.

Where a warranty is not complied with, the insurer is discharged from liability as from the

date of the breach of warranty with respect to any loss which occurs subsequently; the insured may not avail himself of the defence that the breach has been remedied, and the warranty complied with, before the loss.

1991, c. 64, s. 2554.

2555. The insured is not required to comply with a warranty which has become unlawful or which has ceased, by reason of a change of circumstances, to be applicable to the circumstances of the contract.

1991, c. 64, s. 2555.

2556. A warranty may be express or implied. An express warranty may be in any form of words but shall be written in the policy or contained in a document incorporated into the policy by way of a rider.

An express warranty does not exclude an implied warranty, unless it is inconsistent therewith.

1991, c. 64, s. 2556.

2557. Where insurable property, whether ship or goods, is expressly warranted " neutral", there is an implied warranty that the property will have a neutral character at the commencement of the risk and that, so far as the insured can control the matter, its neutral character will be preserved during the risk.

Where a ship is expressly warranted " neutral" there is also an implied warranty that, so far as the insured can control the matter, she will carry the necessary papers to establish her neutrality and that she will not falsify or suppress her papers or use simulated papers. If any loss occurs through breach of this implied warranty, the insurer may bring an action for the annulment of the contract.

1991, c. 64, s. 2557.

2558. There is no implied warranty as to the nationality of a ship, or that her nationality will not be changed during the risk.

1991, c. 64, s. 2558.

2559. Where the insured property is warranted well or in good safety on a particular day, it is sufficient if it be safe at any time during that day.

1991, c. 64, s. 2559.

2560. In a voyage policy, there is an implied warranty that at the commencement of the voyage the ship will be seaworthy for the purpose of the particular adventure insured.

Where the risk attaches while the ship is in port, there is also an implied warranty that, at the commencement of the risk, she will be fit to encounter the ordinary perils of the port; where

the different stages of a voyage require different kinds of or further preparation or equipment for the ship, there is an implied warranty that the ship will be seaworthy at the commencement of each stage.

1991, c. 64, s. 2560.

2561. In a time policy there is no implied warranty that the ship is seaworthy.

Where, with the knowledge of the insured, the ship is sent to sea in an unseaworthy state, the insurer is not liable for any loss attributable to such unseaworthiness.

1991, c. 64, s. 2561.

2562. A ship is deemed to be seaworthy when she is fit in all respects to encounter the ordinary perils of the seas of the adventure insured.

1991, c. 64, s. 2562.

2563. In a contract of insurance on goods or other movables, there is no implied warranty that the goods or movables are seaworthy.

In a voyage policy there is an implied warranty that, at the commencement of the voyage, the ship is seaworthy and that she is fit to carry the goods to the destination contemplated.

1991, c. 64, s. 2563.

2564. There is an implied warranty that the adventure insured is not unlawful and that, so far as the insured can control the matter, the adventure will be carried out in a lawful manner.

1991, c. 64, s. 2564.

§8. — *The voyage*

I — Commencement

2565. In a voyage contract there is an implied condition that if, when the contract is made the ship is not at the place of departure specified therein, the adventure will nevertheless commence within a reasonable time.

If the adventure is not so commenced, the insurer may apply for the annulment of the contract unless the insured shows that the delay was caused by circumstances known to the insurer before the contract was made.

1991, c. 64, s. 2565.

2566. Where the ship sails from a place other than the place of departure specified in the contract the risk does not attach.

The same applies where the ship sails for a destination other than that specified in the contract.

1991, c. 64, s. 2566.

II — Change of voyage

2567. There is a change of voyage from such time as, after the commencement of the risk, the determination to voluntarily change the destination specified in the contract is manifested.

The insurer is discharged from liability from the time of the change whether or not the course has in fact been changed when the loss occurs.

1991, c. 64, s. 2567.

III — Deviation

2568. There is a deviation where the ship departs in fact from the course specified in the contract or, if none is specified, where the usual and customary course is departed from.

The insurer is discharged from liability from the time of a deviation without lawful excuse, whether or not the ship has regained her route before any loss occurs.

1991, c. 64, s. 2568.

2569. Where several places of discharge are specified in the contract, the ship may proceed to all or any of them.

In the absence of any usage or lawful excuse to the contrary, the ship shall proceed to such of the places as she goes to in the order specified in the contract; if she does not, there is a deviation.

1991, c. 64, s. 2569.

2570. Where several places of discharge within a given area are referred to in the contract in general terms but are not named, the ship shall, in the absence of any usage or lawful excuse to the contrary, proceed to such of them as she goes to in their geographical order; if she does not, there is a deviation.

1991, c. 64, s. 2570.

IV — Delay

2571. In the case of a voyage contract, the adventure shall be prosecuted with dispatch and, if without lawful excuse it is not so prosecuted, the insurer is discharged from liability from the time when the lack of dispatch becomes manifest.

1991, c. 64, s. 2571.

V — Excuses for deviation or delay

2572. Deviation or delay in prosecuting the voyage is excused where authorized by the contract or necessary in order to comply with an express or implied warranty or where caused by circumstances beyond the control of the master and his employer or necessary for the safety of the insured property.

Deviation or delay is also excused where it occurs for the purpose of saving human life or aiding a ship in distress where human life may be in danger or where necessary for the purpose of obtaining medical or surgical aid for any person on board the ship, or where caused by the barratrous conduct of the master or crew, provided barratry is one of the perils insured against.

1991, c. 64, s. 2572.

2573. When the cause excusing the deviation or delay ceases to operate, the ship shall resume her course, and prosecute her voyage with reasonable dispatch.

1991, c. 64, s. 2573.

2574. Where, by the occurrence of an event insured against, the voyage is interrupted at an intermediate place under such circumstances as, apart from any special stipulation in the contract of affreightment, to justify the master in landing and reshipping the goods or other movables, or in transhipping them, and sending them on to their destination, the liability of the insurer continues.

1991, c. 64, s. 2574.

§9. — Notice of loss

2575. The notice of loss is governed by the rules applicable in non-marine damage insurance.

1991, c. 64, s. 2575.

2576. The insurer is liable only for losses directly caused by a peril insured against.

The insurer is not liable for any such loss caused by the wilful misconduct of the insured, but he is liable if it is caused by the misconduct of the master or crew.

1991, c. 64, s. 2576.

2577. The insurer on ship or goods is not liable for any loss directly caused by delay, although the delay may be attributable to the occurrence of an event insured against.

The insurer is not liable for any injury to machinery not directly caused by maritime perils

nor for any loss directly caused by rats or vermin, nor for ordinary wear and tear, leakage and breakage during a voyage, or inherent defect or nature of the insured property.

1991, c. 64, s. 2577.

2578. A loss may be either total or partial.

A total loss may be either an actual total loss or a constructive total loss.

Only a loss contemplated by this subsection may be considered a total loss.

1991, c. 64, s. 2578.

2579. Unless a different intention appears from the terms of the policy, an insurance against total loss includes a constructive total loss as well as an actual total loss.

1991, c. 64, s. 2579.

2580. There is an actual total loss where the insured is irretrievably deprived of the insured property or where it is destroyed or so damaged as to cease to be a thing of the kind insured. An actual total loss may be presumed where the ship is missing and no news of her has been received for a reasonable period of time.

1991, c. 64, s. 2580.

2581. There is a constructive total loss where the insured property is abandoned on account of its actual total loss appearing to be unavoidable, or because it could not be preserved from actual total loss without an expenditure which would exceed the value of the insured property.

There is also a constructive total loss where the insured is deprived of the possession of the insured property by a peril insured against and it is either unlikely that he can recover it, or too costly to attempt to do so; there is also constructive total loss where repairing the damage to the insured property would be too costly.

1991, c. 64, s. 2581.

2582. Recovery or repair is presumed to be too costly where the cost would exceed the value of the insured property at the time the expense was incurred or where the cost of repairing the damage and forwarding the goods to their destination would exceed their value on arrival or where the cost of repairing the damage to the ship would exceed the value of the ship when repaired.

1991, c. 64, s. 2582.

2583. In estimating the cost of repairs, no deduction is to be made in respect of general average contributions to those repairs payable by other interests.

However, account is to be taken of the expense of future salvage operations and of any

future general average contributions to which the ship would be liable if repaired.

1991, c. 64, s. 2583.

2584. Where there is a constructive total loss, the insured may either treat the loss as a partial loss, or abandon the insured property to the insurer and treat the loss as if it were an actual total loss.

1991, c. 64, s. 2584.

2585. Where the insured brings an action for a total loss and the evidence proves only a partial loss, he may nevertheless recover for a partial loss, unless partial losses are not covered by the contract.

1991, c. 64, s. 2585.

2586. Where goods that have reached their destination are incapable of identification by reason of obliteration of marks or otherwise, the insured has a right of action for partial loss only.

1991, c. 64, s. 2586.

§10. — Abandonment

2587. Where the insured elects to abandon the insured property, he shall give notice of abandonment, except in the case of total actual loss. If he fails to do so, he has a right of action for partial loss only.

1991, c. 64, s. 2587.

2588. There are no special requirements as to the form or substance of the notice of abandonment but the insured shall make his intention to effect unconditional abandonment manifest.

1991, c. 64, s. 2588.

2589. Notice of abandonment shall be given with diligence after the receipt of reliable information of the loss.

Where the information is of a doubtful character the insured is entitled to a reasonable time to make inquiry.

1991, c. 64, s. 2589.

2590. Notice of abandonment is unnecessary if, at the time the insured receives information of the loss, there would be no possibility of benefit to the insurer if notice were given to him.

1991, c. 64, s. 2590.

2591. The insurer need not give notice of the abandonment to his reinsurer.

1991, c. 64, s. 2591.

2592. The insurer may either accept or refuse an abandonment validly tendered. He may also waive notice of abandonment.

The acceptance of an abandonment may be either express or implied from the conduct of the insurer, but the mere silence of the insurer is not an acceptance.

1991, c. 64, s. 2592.

2593. The acceptance of the notice admits sufficiency of the notice, renders the abandonment irrevocable and conclusively admits the insurer's liability for the insured's loss.

1991, c. 64, s. 2593.

2594. Where the insurer accepts the abandonment, he becomes, from the time of the loss, the owner of the interest of the insured in whatever may remain of the insured property and all rights and obligations incidental thereto.

An insurer who has accepted the abandonment of a ship is entitled to any freight earned after the loss, less the expenses of earning it incurred after the loss. And, where the ship is carrying the ship owner's goods, the insurer is entitled to a reasonable remuneration for the carriage of them subsequent to the loss.

1991, c. 64, s. 2594.

2595. Where the notice of abandonment is properly given, the rights of the insured, particularly the right of recovery for a constructive total loss, are not prejudiced by the fact that the insurer refuses to accept the abandonment.

The insured retains his interest in whatever may remain of the insured property and all incidental rights and obligations, even if the insurer indemnifies him for the loss or damage which gave rise to the abandonment.

1991, c. 64, s. 2595.

§11. — *Kinds of average loss*

2596. A particular average loss is a partial loss of the insured property, caused by a peril insured against, and which is not a general average loss.

1991, c. 64, s. 2596.

2597. Expenses incurred by or on behalf of the insured for the preservation or safety of the insured property, other than general average and salvage charges, are called particular

charges.

Particular charges are not included in particular average.

1991, c. 64, s. 2597.

2598. Salvage charges incurred in preventing a loss by perils insured against may be recovered as a loss by those perils.

"Salvage charges" means the charges recoverable under maritime law by a salvor independently of contract. They do not include the expenses of services in the nature of salvage rendered by the insured or by persons acting on his behalf, or any person employed for hire by them, for the sole purpose of averting a peril insured against, unless such expenses are properly incurred, in which case they may be recovered as particular charges or as a general average loss, according to the circumstances in which they were incurred.

1991, c. 64, s. 2598.

2599. A general average loss is a loss caused by a general average act.

There is a general average act where any extraordinary sacrifice or expense is intentionally and reasonably made or incurred in time of peril for the purpose of preserving the property imperilled.

1991, c. 64, s. 2599.

2600. Where there is a general average loss, the party on whom it falls is entitled, subject to the conditions imposed by maritime law, to a rateable contribution from other interested persons, and such contribution is called a general average contribution.

1991, c. 64, s. 2600.

2601. Where the insured has incurred a general average expenditure, he may recover from the insurer in respect of the proportion of the loss which falls upon him, if any; in the case of a general average sacrifice, he may recover from the insurer in respect of the whole loss without having enforced his right of contribution from the other parties.

1991, c. 64, s. 2601.

2602. 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.

1991, c. 64, s. 2602.

2603. Where the ship, freight, and cargo, or other movable property, or any two of them, are owned by the same insured, the liability of the insurer in respect of general average losses or contributions is to be determined as if those properties were owned by different persons.

1991, c. 64, s. 2603.

§12. — Measure of indemnity

2604. The measure of indemnity is the sum recoverable, to the full extent of the insurable value in the case of an unvalued policy or, in the case of a valued policy, to the full extent of the value fixed in the policy.

1991, c. 64, s. 2604.

2605. Where there is a loss recoverable under the contract, the insurer, or each insurer if there are more than one, is liable for such proportion of the measure of indemnity as the amount of his subscription bears to the value fixed in the policy in the case of a valued policy, or to the insurable value in the case of an unvalued policy.

1991, c. 64, s. 2605.

2606. The measure of indemnity for a total loss is the sum fixed in the contract in the case of a valued policy, or the insurable value of the insured property in the case of an unvalued policy.

1991, c. 64, s. 2606.

2607. Where freight is lost, the measure of indemnity is such proportion of the sum fixed in the policy, in the case of a valued policy, or of the insurable value, in the case of an unvalued policy, as the proportion of freight lost bears to the whole insured freight.

1991, c. 64, s. 2607.

2608. Where a ship is damaged, but is not totally lost, the measure of indemnity is as follows:

(1) where the ship has been repaired, the insured is entitled to the reasonable cost of the repairs, less the customary deductions, but not exceeding the sum insured in respect of any one casualty;

(2) where the ship has been only partially repaired, the insured is entitled to the reasonable cost of such repairs computed as in paragraph 1, and also to be indemnified for the reasonable depreciation arising from the unrepaired damage, provided that the aggregate amount does not exceed the cost of repairing the whole damage;

(3) where the ship has not been repaired, and has not been sold in her damaged state during the risk, the insured is entitled to be indemnified for the reasonable depreciation arising from the unrepaired damage, but not exceeding the reasonable cost of repairing such damage, computed as in paragraph 1.

1991, c. 64, s. 2608.

2609. Where part of the goods or other movable property insured by a valued contract is totally lost, the measure of indemnity is such proportion of the sum fixed in the contract as the insurable value of the part lost bears to the insurable value of the whole, ascertained as in the case of an unvalued contract.

Where part of the property insured by an unvalued contract is totally lost, the measure of indemnity is the insurable value of the part lost, ascertained as in case of total loss.

1991, c. 64, s. 2609.

2610. Where the whole or any part of the goods or other movable property insured has been delivered damaged at its destination, the measure of indemnity is such proportion of the sum fixed or, as the case may be, of the insurable value, as the difference between the gross sound and damaged values bears to the gross sound value.

"Gross value" means the wholesale price at destination or, if there is no such price, the estimated value of the property with, in either case, freight, landing charges and duty paid beforehand or, in the case of goods customarily sold in bond, the bonded price.

1991, c. 64, s. 2610.

2611. Where different species of property are insured under a single valuation, the valuation is apportioned over the different species in proportion to their respective insurable values; similarly, the insured value of any part of a species is such proportion of the total insured value of that species as the insurable value of the part bears to the insurable value of the whole.

Where the valuation of the insured value of different species of goods has to be apportioned, and particulars of the invoice value, quality, or description of each separate species cannot be ascertained, the division of the valuation may be made over the net arrived sound values of the goods.

1991, c. 64, s. 2611.

2612. Where the insured has paid, or is liable for, any general average contribution, the measure of indemnity is the full amount of such contribution if the property is insured for its full contributory value; if the property is not insured for its full contributory value or if only part of it is insured, the indemnity is reduced in proportion to the under-insurance.

The amount awarded as compensation for damage suffered by the insured by reason of a particular average loss which constitutes a deduction from the contributory value, and for which the insurer is liable, shall be deducted from the insured value in order to ascertain what the insurer is liable to contribute.

The extent of the insurer's liability for salvage charges is determined on the same principle.

1991, c. 64, s. 2612.

2613. The measure of indemnity payable under a civil liability insurance contract is the sum paid or payable to third persons, up to the amount of insurance.

1991, c. 64, s. 2613.

2614. Where the loss sustained is not expressly provided for in this subsection, the measure of indemnity is ascertained, as nearly as may be, in accordance with this subsection.

1991, c. 64, s. 2614.

2615. Where the insured property is warranted free from particular average, the insured may not recover for a loss of part of the insured property other than a loss incurred by a general average sacrifice, unless the contract is apportionable.

If the contract is apportionable, the insured may recover for a total loss of any apportionable part of the insured property.

1991, c. 64, s. 2615.

2616. Where the insured property is warranted free from particular average, either wholly or under a certain percentage, the insurer is nevertheless liable for salvage charges, and for particular charges and other expenses properly incurred pursuant to the provisions of the suing and labouring clause in order to avert a loss insured against.

A general average loss may not be added to a particular average loss to make up the percentage stipulated in the contract. Likewise, no regard is had to particular charges and the expenses of and incidental to ascertaining the loss.

1991, c. 64, s. 2616.

2617. Subject to the provisions of this subsection, the insurer is liable for successive losses, even though the total amount of such losses may exceed the sum insured.

Where, under the same policy, a partial loss which has not been the subject of repairs or replacement is followed by a total loss, the insured may only recover in respect of the total loss.

The liability of the insurer under the suing and labouring clause is not affected.

1991, c. 64, s. 2617.

2618. A suing and labouring clause is deemed to be supplementary to the contract of insurance; the insured may recover from the insurer any expenses properly incurred pursuant to the clause, notwithstanding that the insurer may have paid for a total loss, or that the property may have been warranted free from particular average, either wholly or under a certain percentage.

General average losses and contributions, salvage charges, and expenses incurred for the

purpose of averting or diminishing any loss not covered by the contract are not recoverable under the suing and labouring clause.

1991, c. 64, s. 2618.

2619. It is the duty of the insured and of persons acting on his behalf, in all cases, to take reasonable measures for the purpose of averting or minimizing a loss.

1991, c. 64, s. 2619.

§13. — *Miscellaneous provisions*

I — Subrogation

2620. Where the insurer pays for a total loss, either of the whole, or, in the case of goods, of any apportionable part of the insured property, he becomes entitled to take over the interest of the insured in whatever may remain of the property so paid for and he is thereby subrogated to all the rights and remedies of the insured in and in respect of the insured property from the time of the event causing the loss.

Subject to the foregoing provisions, where the insurer pays for a particular average loss, he acquires no right to the insured property, or to any part of it that may remain, but he is thereupon subrogated to all rights and remedies of the insured in or in respect of the property from the time of the event causing the loss, up to the indemnity paid.

1991, c. 64, s. 2620.

II — Double insurance

2621. Where two or more insurance policies are effected by or on behalf of the insured on the same adventure and interest or any part thereof and the sums insured exceed the indemnity recoverable, the insured is said to be over-insured by double insurance.

1991, c. 64, s. 2621.

2622. Where the insured is over-insured by double insurance, he may claim payment from the insurers in such order as he may think fit, but in no case is he entitled to receive any sum in excess of the indemnity recoverable.

1991, c. 64, s. 2622.

2623. Where the contract under which the insured claims is a valued policy, the insured shall give credit as against the valuation for any sum received by him under any other policy without regard to the actual value of the insured property.

Where the contract under which the insured claims is an unvalued policy, the insured shall give credit, as against the full insurable value, for any sum received by him under any other policy.

1991, c. 64, s. 2623.

2624. Where the insured receives any sum in excess of the indemnity recoverable, he is deemed to hold such sum on behalf of the insurers according to their right of contribution among themselves.

1991, c. 64, s. 2624.

2625. Where the insured is over-insured by double insurance, each insurer is bound, as between himself and the other insurers, to contribute to the loss rateably to the amount for which he is liable under his contract.

If any insurer pays more than his proportion of the loss, he is entitled to recover the excess from the other insurers in the same manner as a surety who has paid more than his proportion of the debt.

1991, c. 64, s. 2625.

III — Under-insurance

2626. Where the insured is insured for an amount less than the insurable value or, in the case of a valued policy, for an amount less than the policy valuation, the insured is deemed to be his own insurer in respect of the uninsured balance.

1991, c. 64, s. 2626.

IV — Mutual insurance

2627. Where two or more persons mutually agree to insure each other against marine losses there is said to be a mutual insurance.

Mutual insurance is governed by the provisions of this section except those relating to the premium but such arrangement as may be agreed upon may be substituted for the premium.

1991, c. 64, s. 2627.

V — Direct action

2628. Articles 2500 to 2502 respecting the direct action of injured third persons apply to marine insurance. Any stipulation that is inconsistent with such rules is null.

1991, c. 64, s. 2628.

CHAPTER XVI

GAMING AND WAGERING

2629. Gaming and wagering contracts are valid in the cases expressly authorized by law.

They are also valid where related to lawful activities and games requiring only skill or

bodily exercises on the part of the parties, unless the amount at stake is immoderate according to the circumstances and in view of the condition and means of the parties.

1991, c. 64, s. 2629.

2630. Where gaming and wagering contracts are not expressly authorized by law, the winning party may not exact payment of the debt and the losing party may not recover the sum paid.

The losing party may recover the sum paid, however, in cases of fraud or trickery or where the losing party is a minor or a person of full age who is protected or not endowed with reason.

1991, c. 64, s. 2630.

CHAPTER XVII

TRANSACTION

2631. Transaction is a contract by which the parties prevent a future contestation, put an end to a lawsuit or settle difficulties arising in the execution of a judgment, by way of mutual concessions or reservations.

A transaction is indivisible as to its object.

1991, c. 64, s. 2631.

2632. No transaction may be made with respect to the status or capacity of persons or to other matters of public order.

1991, c. 64, s. 2632.

2633. A transaction has, between the parties, the authority of a final judgment (*res judicata*).

A transaction is not subject to compulsory execution until it is homologated.

1991, c. 64, s. 2633.

2634. Error of law is not a cause for annulling a transaction. Apart from such exception, a transaction may be annulled for lesion or any other cause of nullity of contracts in general.

1991, c. 64, s. 2634.

2635. A transaction based on a title that is null is also null, unless the parties have expressly referred to and covered the nullity.

A transaction based on writings later found to be false is also null.

1991, c. 64, s. 2635.

2636. A transaction based on a lawsuit is null if either party was unaware that the litigation had been terminated by a judgment having acquired the authority of a final judgment (*res judicata*).

1991, c. 64, s. 2636.

2637. Where the parties have made a transaction on all matters between them, the subsequent discovery of documents of which they were unaware at the time of the transaction does not constitute a cause for annulling the transaction, unless the documents were withheld by one of the parties or, to his knowledge, by a third person.

However, the transaction is null if it relates to only one object and if the documents later discovered prove that one of the parties had no rights in it.

1991, c. 64, s. 2637.

CHAPTER XVIII

ARBITRATION AGREEMENTS

2638. An arbitration agreement is a contract by which the parties undertake to submit a present or future dispute to the decision of one or more arbitrators, to the exclusion of the courts.

1991, c. 64, s. 2638.

2639. Disputes over the status and capacity of persons, family matters or other matters of public order may not be submitted to arbitration.

An arbitration agreement may not be opposed on the ground that the rules applicable to settlement of the dispute are in the nature of rules of public order.

1991, c. 64, s. 2639.

2640. An arbitration agreement shall be evidenced in writing; it is deemed to be evidenced in writing if it is contained in an exchange of communications which attest to its existence or in an exchange of proceedings in which its existence is alleged by one party and is not contested by the other party.

1991, c. 64, s. 2640.

2641. A stipulation which places one party in a privileged position with respect to the designation of the arbitrators is null.

1991, c. 64, s. 2641.

2642. An arbitration agreement contained in a contract is considered to be an agreement separate from the other clauses of the contract and the ascertainment by the arbitrators that the contract is null does not entail the nullity of the arbitration agreement.

1991, c. 64, s. 2642.

2643. Subject to the peremptory provisions of law, the procedure of arbitration is governed by the contract or, failing that, by the Code of Civil Procedure.

1991, c. 64, s. 2643.

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BOOK SIX

PRIOR CLAIMS AND HYPOTHECS

TITLE ONE

COMMON PLEDGE OF CREDITORS

2644. The property of a debtor is charged with the performance of his obligations and is the common pledge of his creditors.

1991, c. 64, s. 2644.

2645. Any person under a personal obligation charges, for its performance, all his property, movable and immovable, present and future, except property which is exempt from seizure or property which is the object of a division of patrimony permitted by law.

However, the debtor may agree with his creditor to be bound to fulfil his obligation only from the property they designate.

1991, c. 64, s. 2645.

2646. Creditors may institute judicial proceedings to cause the property of their debtor to be seized and sold.

If the creditors rank equally, the price is distributed proportionately to their claims, unless some of them have a legal cause of preference.

1991, c. 64, s. 2646.

2647. Prior claims and hypothecs are the legal causes of preference.

1991, c. 64, s. 2647.

2648. The movable property of the debtor which furnishes his main residence, used by and necessary for the life of the household, may be exempted from seizure to the extent fixed by the Code of Civil Procedure, except where such movables are seized for sums owed on the price.

The same rule applies to instruments of work needed for the personal exercise of a professional activity, except where such movables are seized by a creditor holding a hypothec thereon.

1991, c. 64, s. 2648.

2649. A stipulation of unseizability is without effect, unless it is made in an act by gratuitous title and is temporary and justified by a serious and legitimate interest. Nevertheless, the property remains liable to seizure to the extent provided in the Code of Civil Procedure.

It may be set up against third persons only if it is published in the appropriate register.

1991, c. 64, s. 2649; 2002, c. 19, s. 15.

TITLE TWO

PRIOR CLAIMS

2650. A claim to which the law attaches the right of the creditor to be preferred over the other creditors, even the hypothecary creditors, is a prior claim.

The priority of a claim is indivisible.

1991, c. 64, s. 2650.

2651. The following are the prior claims and, notwithstanding any agreement to the contrary, they are in all cases collocated in the order here set out:

- (1) legal costs and all expenses incurred in the common interest;
- (2) the claim of a vendor who has not been paid the price of a movable sold to a natural person who does not operate an enterprise;
- (3) the claims of persons having the right to retain movable property, provided that the right subsists;
- (4) claims of the State for amounts due under fiscal laws;
- (5) claims of municipalities and school boards for property taxes on taxable immovables as well as claims of municipalities, specially provided for by laws applicable to them, for taxes

other than property taxes on immovables and movables in respect of which the taxes are due.

1991, c. 64, s. 2651; 1999, c. 90, s. 41.

2652. Prior claims covering legal costs and expenses incurred in the common interest may be executed on movable or immovable property.

1991, c. 64, s. 2652.

2653. Prior claims of the State for sums due under fiscal laws may be executed on movable property.

1991, c. 64, s. 2653.

2654. A creditor who takes procedures in execution or who, as holder of a movable hypothec, has registered a prior notice of his intention to exercise his hypothecary rights, may apply to the State to declare the amount of its prior claim. The application shall be registered and proof of notification shall be filed in the registry office.

Within thirty days following the notification, the State shall declare the amount of its claim and enter it in the register of personal and movable real rights; such a declaration does not have the effect of limiting the priority of the State's claim to the amount entered.

1991, c. 64, s. 2654.

2654.1. Prior claims of municipalities and school boards for property taxes constitute a real right.

They confer on the holder of the claims the right to follow the taxable property into whose hands it may be.

1999, c. 90, s. 42.

2655. Prior claims may be set up against other creditors, or against all third persons if they constitute a real right, without being published.

1991, c. 64, s. 2655; 1999, c. 90, s. 43.

2656. In addition to their personal or, as the case may be, real right of action and the provisional measures provided in the Code of Civil Procedure, prior creditors may exercise their remedies under the law for the enforcement and realization of their prior claim.

1991, c. 64, s. 2656; 1999, c. 90, s. 44.

2657. Prior claims rank, according to their order among themselves, and without regard to their date, before movable or immovable hypothecs.

Prior claims of the same rank come in proportion to the amount of each claim.

1991, c. 64, s. 2657.

2658. In a case of distribution or collocation among several prior creditors, the creditor of an indeterminate, unliquidated or conditional claim is collocated according to his rank, but subject to the conditions prescribed in the Code of Civil Procedure.

1991, c. 64, s. 2658.

2659. The priority granted by law to certain claims ceases by operation of law when the obligation which is its cause is extinguished.

1991, c. 64, s. 2659.

TITLE THREE

HYPOTHECS

CHAPTER I

GENERAL PROVISIONS

SECTION I

NATURE OF HYPOTHECS

2660. A hypothec is a real right on a movable or immovable property made liable for the performance of an obligation. It confers on the creditor the right to follow the property into whose hands it may be, to take possession of it or to take it in payment, or to sell it or cause it to be sold and, in that case, to have a preference upon the proceeds of the sale ranking as determined in this Code.

1991, c. 64, s. 2660.

2661. A hypothec is merely an accessory right, and subsists only as long as the obligation whose performance it secures continues to exist.

1991, c. 64, s. 2661.

2662. A hypothec is indivisible and subsists in its entirety over all the charged properties, over each of them and over every part of them, even where the property or obligation is divisible.

1991, c. 64, s. 2662.

2663. The hypothecary rights conferred by a hypothec may be set up against third persons only when the hypothec is published in accordance with this Book or the Book on Publication of Rights.

1991, c. 64, s. 2663.

SECTION II

KINDS OF HYPOTHEC

2664. Hypothecation may take place only on the conditions and according to the formalities authorized by law.

A hypothec may be conventional or legal.

1991, c. 64, s. 2664.

2665. A hypothec is movable or immovable depending on whether the object charged is movable or immovable property or a universality of movable or immovable property.

A movable hypothec may be created with or without delivery of the movable hypothecated. Where it is created with delivery, it may also be called a pledge.

1991, c. 64, s. 2665.

SECTION III

OBJECT AND EXTENT OF HYPOTHECS

2666. A hypothec is a charge on one or several specific corporeal or incorporeal properties, or on all the properties included in a universality.

1991, c. 64, s. 2666.

2667. A hypothec secures the capital, the interest accrued thereon and the legitimate costs, other than extra-judicial professional fees, incurred for their recovery or for conserving the charged property.

1991, c. 64, s. 2667; 2002, c. 19, s. 11.

2668. Property exempt from seizure may not be hypothecated.

The same rule applies to movable property belonging to a debtor which furnishes his main residence and which is used by and is necessary for the life of the household.

1991, c. 64, s. 2668.

2669. A hypothec granted on the bare ownership does not extend to the full ownership upon extinction of the dismemberment of the right of ownership.

1991, c. 64, s. 2669.

2670. A hypothec on the property of another or on future property begins to affect it only when the grantor acquires title to the hypothecated right.

1991, c. 64, s. 2670.

2671. A hypothec extends to everything united to the property by accession.

1991, c. 64, s. 2671.

2672. Movable charged with a hypothec which are permanently physically attached or joined to an immovable without losing their individuality and without being incorporated with the immovable are deemed, for the enforcement of the hypothec, to retain their movable character for as long as the hypothec subsists.

1991, c. 64, s. 2672.

2673. A hypothec subsists on the new movable resulting from the transformation of property charged with a hypothec and extends to property resulting from the mixture or combination of several movables of which some are so charged. A person acquiring ownership of the new property, particularly through application of the rules on movable accession, is bound by such hypothecs.

1991, c. 64, s. 2673.

2674. A hypothec on a universality of property subsists but extends to any property of the same nature which replaces property that has been alienated in the ordinary course of business of an enterprise.

A hypothec on an individual property alienated in the same way extends to property that replaces it, by the registration of a notice identifying the new property.

If no property replaces the alienated property, the hypothec subsists but extends only to the proceeds of the alienation, provided they may be identified.

1991, c. 64, s. 2674.

2675. A hypothec on a universality of property subsists notwithstanding the loss of the hypothecated property where the debtor or the grantor replaces it in a reasonable time, having regard to the quantity and nature of the property.

1991, c. 64, s. 2675.

2676. A hypothec on a universality of claims does not extend to the subsequent claims of the person granting the hypothec when such claims result from the sale of his other property by a third person exercising his rights.

Nor does it extend to a claim under an insurance contract on the other property of the grantor.

1991, c. 64, s. 2676; 2002, c. 19, s. 15.

2677. A hypothec on shares of the capital stock of a legal person subsists on the shares or other securities received or issued on the purchase, redemption, conversion or cancellation or any other transformation of the hypothecated shares, provided the registration of the hypothec is renewed against the shares or other securities received or issued.

The creditor may not object to the transformation on the ground of his hypothec.

1991, c. 64, s. 2677.

2678. Where what is owed to the creditor is the object of a tender or deposit in accordance with this Code, the court may, following an application by the debtor making the tender or deposit, authorize the extension of the hypothec on the property tendered or deposited, and it may allow the amount initially registered to be reduced.

Once the reduction of the initial amount is entered in the appropriate register, the debtor is no longer entitled to withdraw his tender or the property deposited.

1991, c. 64, s. 2678.

2679. A hypothec on an undivided share of a property subsists if the grantor or his successor preserves rights over some part of the property by partition or other act declaratory or act of attribution of ownership, subject to the Book on Successions.

If the grantor does not preserve any rights over the property, the hypothec nevertheless subsists and extends, according to its rank, to the price of transfer payable to the grantor, to the payment resulting from the exercise of a right of redemption or a first refusal agreement, or to the balance payable to the grantor.

1991, c. 64, s. 2679.

2680. In the case of distribution or collocation among several hypothecary creditors, the creditor of an indeterminate, unliquidated or conditional claim is collocated according to his rank, but subject to the conditions prescribed in the Code of Civil Procedure.

1991, c. 64, s. 2680.

CHAPTER II

CONVENTIONAL HYPOTHECS

SECTION I

THE GRANTOR OF A HYPOTHEC

2681. A conventional hypothec may be granted only by a person having the capacity to alienate the property hypothecated.

It may be granted by the debtor of the obligation secured or by a third person.

1991, c. 64, s. 2681.

2682. A person whose right in a property is conditional or open to an attack in nullity may only grant a hypothec subject to the same condition or nullity.

1991, c. 64, s. 2682.

2683. Except where he operates an enterprise and the hypothec is charged on the property of that enterprise, a natural person may grant a movable hypothec without delivery only on road vehicles or other movable property determined by regulation and subject to the conditions determined by regulation.

Where the act constituting the hypothec is accessory to a consumer contract, it is subject to the rules as to form and contents prescribed by this Book or by regulation.

1991, c. 64, s. 2683; 1998, c. 5, s. 9.

2684. Only a person or a trustee carrying on an enterprise may grant a hypothec on a universality of property, movable or immovable, present or future, corporeal or incorporeal.

The person or trustee may thus hypothecate animals, tools or equipment pertaining to the enterprise, claims and customer accounts, patents and trademarks, or corporeal movables included in the assets of any of his enterprises kept for sale, lease or processing in the manufacture or transformation of property intended for sale, for lease or for use in providing a service.

1991, c. 64, s. 2684.

2685. Only a person carrying on an enterprise may grant a hypothec on a movable represented by a bill of lading.

1991, c. 64, s. 2685.

2686. Only a person or a trustee carrying on an enterprise may grant a floating hypothec on the property of the enterprise.

1991, c. 64, s. 2686.

SECTION II

OBLIGATIONS SECURED BY HYPOTHECS

2687. A hypothec may be granted to secure any obligation whatever.

1991, c. 64, s. 2687.

2688. A hypothec granted to secure payment of a sum of money is valid even if, when it is granted, the debtor has not received the prestation in consideration of which he has undertaken the obligation or has received only part of it.

This rule is applicable in particular to lines of credit and the issue of bonds or other titles of indebtedness.

1991, c. 64, s. 2688.

2689. An act validly constituting a hypothec indicates the specific sum for which it is granted.

The same rule applies even where the hypothec is constituted to secure the performance of an obligation of which the value cannot be determined or is uncertain.

1991, c. 64, s. 2689.

2690. The sum for which the hypothec is granted is not considered to be indeterminate where the act, rather than stipulating a fixed rate of interest, contains the necessary particulars for determining the actual rate of interest on the obligation.

1991, c. 64, s. 2690.

2691. Where the creditor refuses to hand over the sums of money he has undertaken to lend and for which he holds a hypothec as security, the debtor or the grantor may, at the expense of the creditor, cause the hypothec to be reduced or cancelled, upon payment, in the latter case, of only the amounts that may then be due.

1991, c. 64, s. 2691.

2692. A hypothec securing payment of bonds or other titles of indebtedness issued by a trustee, a limited partnership or a legal person authorized to do so by law shall, on pain of absolute nullity, be granted by notarial act *en minute* in favour of the person holding the power of attorney of the creditors.

1991, c. 64, s. 2692.

SECTION III

IMMOVABLE HYPOTHECS

2693. An immovable hypothec is, on pain of absolute nullity, granted by notarial act *en minute*.

1991, c. 64, s. 2693.

2694. An immovable hypothec is valid only so far as the constituting act specifically designates the hypothecated property.

1991, c. 64, s. 2694.

2695. Hypothecs on the present and future rents produced by an immovable and hypothecs on the indemnities paid under the insurance contracts covering the rents are considered to be immovable hypothecs.

Such hypothecs are published in the land register.

1991, c. 64, s. 2695.

SECTION IV

MOVABLE HYPOTHECS

§1. — *Movable hypothecs without delivery*

2696. A movable hypothec without delivery shall, on pain of absolute nullity, be granted in writing.

1991, c. 64, s. 2696.

2697. A sufficient description of the hypothecated property shall be contained in the act constituting a movable hypothec or, in the case of a universality of movables, an indication of the nature of that universality.

1991, c. 64, s. 2697.

2698. A movable hypothec charging the fruits and products of the soil, and the materials and other things forming an integral part of an immovable, takes effect when they become movables with a separate existence. It ranks from its date of registration in the register of personal and movable real rights.

1991, c. 64, s. 2698.

2699. A movable hypothec on property represented by a bill of lading or other negotiable instrument or on claims may be set up against the creditors of the grantor from the time the creditor gives value, provided it is registered within the following ten days.

1991, c. 64, s. 2699.

2700. A movable hypothec on property that is not alienated in the ordinary course of business of an enterprise and that is not registered in a file opened under the description of the property is preserved by filing a notice of preservation of hypothec in the register of personal and movable real rights.

The notice shall be registered within fifteen days after the creditor is informed in writing of the transfer of the property and the name of the purchaser, or after he consents in writing to the transfer. The creditor transmits a copy of the notice to the purchaser within the same

time.

The name of the debtor or grantor and of the purchaser and a description of the property shall be indicated in the notice.

1991, c. 64, s. 2700; 1998, c. 5, s. 10.

2701. A movable hypothec assumed by a purchaser may be published.

1991, c. 64, s. 2701.

§2. — *Movable hypothecs with delivery*

2702. A movable hypothec with delivery is granted by delivery of the property or title to the creditor or, if the property is already in his hands, by his continuing to hold it, with the grantor's consent, to secure his claim.

1991, c. 64, s. 2702.

2703. A movable hypothec with delivery is published by the creditor's holding the property or title, and remains so only as long as he continues to hold it.

1991, c. 64, s. 2703.

2704. Holding is continuous even if its exercise is prevented by the act of a third person without the consent of the creditor or is temporarily interrupted by the handing over of the property or title to the grantor or to a third person for evaluation, repair, transformation or improvement.

1991, c. 64, s. 2704.

2705. The creditor, with the consent of the grantor, may hold the property through a third person, but if so, detention by the third person effects publication only from the time the third person receives evidence in writing of the hypothec.

1991, c. 64, s. 2705.

2706. A creditor prevented from holding the property may revendicate it from the person holding it, unless he is prevented as a result of the exercise of hypothecary rights or a seizure in execution by another creditor.

1991, c. 64, s. 2706.

2707. A movable hypothec granted with delivery may be published by registration at a later date, provided publication is not interrupted.

1991, c. 64, s. 2707.

2708. A movable hypothec on property represented by a bill of lading or other negotiable

instrument or on claims may be set up against the creditors of the grantor from the time the creditor gives value, provided the title is remitted to him within ten days from that time.

1991, c. 64, s. 2708.

2709. Where the title is negotiable by endorsement and delivery, or delivery alone, its remittance to the creditor takes place by endorsement and delivery, or by delivery alone.

1991, c. 64, s. 2709.

§3. — *Movable hypothecs on claims*

2710. A movable hypothec on a claim held by the grantor against a third person or on a universality of claims may be granted with or without delivery.

However, in either case the creditor may not set up his hypothec against the debtors of hypothecated claims as long as it may not be set up against them in the same way as an assignment of claim.

1991, c. 64, s. 2710.

2711. A hypothec on a universality of claims, even when granted by the remittance of the title to the creditor, shall be entered in the proper register.

1991, c. 64, s. 2711.

2712. A hypothec on a claim held by the grantor against a third person shall, where the claim is itself secured by a registered hypothec, be published by registration; the creditor shall remit a copy of a certified statement of registration of the hypothecated claim to the debtor.

1991, c. 64, s. 2712.

2713. In all cases, either the creditor or the grantor may institute proceedings in recovery of a hypothecated claim, provided he impleads the other.

1991, c. 64, s. 2713.

§4. — *Movable hypothecs on ships, cargo or freight*

2714. A movable hypothec on a ship is effective only if at the time of publication the ship is not registered under the Canada Shipping Act or under an equivalent foreign law.

A movable hypothec may also be granted on the cargo of a registered ship or on the freight, whether or not the property is on board, but in that case it is subject to any rights over the property which other persons may have under such legislation.

1991, c. 64, s. 2714.

SECTION V

FLOATING HYPOTHECS

2715. A hypothec is a floating hypothec when some of the effects are suspended until, the debtor or grantor having defaulted, the creditor provokes crystallization of the hypothec by serving a notice of default and crystallization of the hypothec on the debtor or grantor.

The floating character of the hypothec shall be expressly stipulated in the act.

1991, c. 64, s. 2715.

2716. A floating hypothec has effect only if it was published beforehand and, if immovable properties are charged, only if it was registered against each of them.

It may not be set up against third persons except by registration of the notice of crystallization.

1991, c. 64, s. 2716.

2717. Any condition or restriction stipulated in the constituting act in respect of the right of the grantor to alienate, hypothecate or dispose of the charged property has effect between the parties even before crystallization.

1991, c. 64, s. 2717.

2718. A floating hypothec on more than one claim has effect in respect of the debtors of hypothecated claims, upon registration of the notice of crystallization, provided the notice has been published in a newspaper circulated in the locality of the last known address of the grantor of the floating hypothec or, where he carries on an enterprise, in the locality where the enterprise has its principal establishment.

The notice need not be published if the hypothec and the notice of crystallization may be set up against the debtors of the hypothecated claims in the same way as an assignment of claim.

1991, c. 64, s. 2718.

2719. By crystallization, a floating hypothec has all the effects of a movable or immovable hypothec in respect of whatever rights the grantor may have at that time in the charged property; if the property includes a universality, the hypothec also charges properties acquired by the grantor after crystallization.

1991, c. 64, s. 2719.

2720. The sale of an enterprise by the grantor may not be set up against the holder of a floating hypothec. The same applies to a merger or reorganization of an enterprise.

1991, c. 64, s. 2720.

2721. The creditor holding a floating hypothec on a universality of property may, from registration of the notice of crystallization, take possession of the property to administer it in preference to any other creditor having published his hypothec after the date of registration of the floating hypothec.

1991, c. 64, s. 2721.

2722. Where there are several floating hypothecs on the same property, crystallization of one of them enables the creditors holding the others to register their own notice of crystallization at the registry office.

1991, c. 64, s. 2722.

2723. Where the default of the debtor has been remedied, the creditor requires the registrar to cancel the notice of crystallization.

The effects of crystallization cease with the cancellation, and the effects of the hypothec are again suspended.

1991, c. 64, s. 2723.

CHAPTER III

LEGAL HYPOTHECS

2724. Only the following claims may give rise to a legal hypothec:

- (1) claims of the State for sums due under fiscal laws, and certain other claims of the State or of legal persons established in the public interest, under specific provision of law;
- (2) claims of persons having taken part in the construction or renovation of an immovable;
- (3) the claim of a syndicate of co-owners for payment of the common expenses and contributions to the contingency fund;
- (4) claims under a judgment.

1991, c. 64, s. 2724.

2725. The legal hypothecs of the State, including those for sums due under fiscal laws, and the hypothecs of legal persons established in the public interest may be charged on movable or immovable property.

Such hypothecs take effect only from their registration in the proper register. Application for registration is made by filing a notice indicating the legislation granting the hypothec, the property of the debtor on which the creditor intends to exercise it, and stating the cause and

the amount of the claim. The notice shall be served on the debtor.

Registration by the State of a legal movable hypothec for sums due under fiscal laws does not prevent it from exercising its prior claim.

1991, c. 64, s. 2725.

2726. A legal hypothec in favour of the persons having taken part in the construction or renovation of an immovable may not charge any other immovable. It exists only in favour of the architect, engineer, supplier of materials, workman and contractor or sub-contractor in proportion to the work requested by the owner of the immovable or to the materials or services supplied or prepared by them for the work. It is not necessary to publish a legal hypothec for it to exist.

1991, c. 64, s. 2726; 1992, c. 57, s. 716.

2727. A legal hypothec in favour of persons having taken part in the construction or renovation of an immovable subsists, even if it has not been published, for thirty days after the work has been completed.

It subsists if, before the thirty-day period expires, a notice describing the charged immovable and indicating the amount of the claim is registered. The notice shall be served on the owner of the immovable.

It is extinguished six months after the work is completed, unless, to preserve the hypothec, the creditor publishes an action against the owner of the immovable or registers a prior notice of the exercise of a hypothecary right.

1991, c. 64, s. 2727.

2728. The hypothec secures the increase in value added to the immovable by the work, materials or services supplied or prepared for the work. However, where those in favour of whom it exists did not themselves enter into a contract with the owner, the hypothec is limited to the work, materials or services supplied after written declaration of the contract to the owner. A workman is not bound to declare his contract.

1991, c. 64, s. 2728.

2729. The legal hypothec of a syndicate of co-owners charges the fraction of the co-owner who has defaulted for more than thirty days on payment of his common expenses or his contribution to the contingency fund, and has effect only upon registration of a notice indicating the nature of the claim, the amount exigible on the day the notice is registered, and the expected amount of charges and claims for the current financial year and the next two years.

1991, c. 64, s. 2729.

2730. Every creditor in whose favour a judgment awarding a sum of money has been rendered by a court having jurisdiction in Québec may acquire a legal hypothec on the movable or immovable property of his debtor.

He may acquire it by registering a notice describing the property charged with the hypothec and specifying the amount of the obligation, and, in the case of an annuity or support, the amount of the instalments and, where applicable, the annual Pension Index. The notice is filed with a copy of the judgment; it must be served on the debtor.

1991, c. 64, s. 2730; 2000, c. 42, s. 5.

2731. Except in the case of the legal hypothec of the State or of a legal person established in the public interest, the court, on application of the owner of the property charged with a legal hypothec, may determine which property the hypothec may charge, reduce the number of the properties or give leave to the applicant to substitute other security for the hypothec sufficient to secure payment; it may thereupon order the registration of the legal hypothec to be cancelled.

1991, c. 64, s. 2731.

2732. A creditor who has registered his legal hypothec preserves his right to follow it on movable property which is not alienated in the ordinary course of business of an enterprise, as though he were the holder of a conventional hypothec.

1991, c. 64, s. 2732.

CHAPTER IV

CERTAIN EFFECTS OF HYPOTHECS

SECTION I

GENERAL PROVISIONS

2733. A hypothec does not divest the grantor or the person in possession, who continue to enjoy their rights over the charged property and may dispose of it, subject to the rights of the hypothecary creditor.

1991, c. 64, s. 2733.

2734. Neither the grantor nor his successor may destroy or deteriorate the hypothecated property or materially reduce its value except by normal use or in case of necessity.

Where he suffers a loss, the creditor may, in addition to his other remedies, and even though his claim is neither liquid nor exigible, recover damages and interest in compensation up to the amount of his claim and with the same right of hypothec; the amount so collected is imputed upon his claim.

1991, c. 64, s. 2734.

2735. Hypothecary creditors may institute legal proceedings to have their hypothec recognized and interrupt prescription, even though their claims are neither liquid nor

exigible.

1991, c. 64, s. 2735.

SECTION II

RIGHTS AND OBLIGATIONS OF CREDITORS IN POSSESSION OF HYPOTHECATED PROPERTY

2736. Where the creditor of a movable hypothec with delivery holds the property charged, he shall do whatever is necessary to preserve it; he may not use it without the permission of the grantor.

1991, c. 64, s. 2736.

2737. The fruits and revenues of the hypothecated property are collected by the creditor.

Unless otherwise stipulated, the creditor hands over the fruits collected to the grantor, and applies the revenues collected, first, to expenses, then to any interest owing to him, and lastly to the capital of the debt.

1991, c. 64, s. 2737.

2738. Where shares of the capital stock of a legal person are redeemed for cash by the issuer, the creditor collecting the price applies it as if it were revenue.

1991, c. 64, s. 2738.

2739. The creditor is not liable for loss of the hypothecated property by superior force or as a result of its ageing, perishability, or normal and authorized use.

1991, c. 64, s. 2739.

2740. The grantor is bound to repay to the creditor his expenses incurred for the preservation of the property.

1991, c. 64, s. 2740.

2741. The grantor may not recover possession of the hypothecated property until performance of his obligation, unless the creditor abuses the property.

The creditor loses his hypothec upon a judgment compelling him to return the property.

1991, c. 64, s. 2741.

2742. An heir of the debtor who has paid his share of the debt may not demand his share of the hypothecated property until the whole debt is paid.

An heir of the creditor may not, on receiving his share of the debt, return the hypothecated

property to the prejudice of any unpaid coheir.

1991, c. 64, s. 2742.

SECTION III

RIGHTS AND OBLIGATIONS OF CREDITORS HOLDING HYPOTHECATED CLAIMS

2743. A creditor holding a hypothec on a claim collects the revenues it produces, together with the capital falling due while the hypothec is in effect; he also gives an acquittance for the sums he collects.

Unless otherwise stipulated, he applies the amounts collected to payment of the obligation, even if it is not yet exigible, according to the rules governing payment generally.

1991, c. 64, s. 2743.

2744. The creditor may, in the act constituting the hypothec, authorize the grantor to collect repayments of capital or the revenues from the hypothecated claims as they fall due.

1991, c. 64, s. 2744.

2745. The creditor may at any time withdraw his authorization to the grantor to collect. To do so he shall notify the grantor and the debtor of the hypothecated rights that he himself will thenceforth collect the sums falling due. The withdrawal of authorization shall be registered.

1991, c. 64, s. 2745; 1998, c. 5, s. 11.

2746. While the hypothec is in effect, the creditor need not sue in order to recover the capital or interest of the hypothecated rights, but he shall inform the grantor within a reasonable time of any irregularity in the payment of any sums exigible on the rights.

1991, c. 64, s. 2746.

2747. The creditor remits to the grantor any sums collected over and above the obligation owed in capital, interest and expenses, notwithstanding any stipulation by which the creditor may keep them on any ground whatever.

1991, c. 64, s. 2747.

CHAPTER V

EXERCISE OF HYPOTHECARY RIGHTS

SECTION I

GENERAL PROVISION

2748. In addition to their personal right of action and the provisional measures provided in the Code of Civil Procedure, creditors have only the hypothecary rights provided in this chapter for the enforcement and realization of their security.

Thus, where their debtor is in default and their claim is liquid and exigible, they may exercise the following hypothecary rights: they may take possession of the charged property to administer it, take it in payment of their claim, have it sold by judicial authority or sell it themselves.

1991, c. 64, s. 2748.

SECTION II

GENERAL CONDITIONS FOR THE EXERCISE OF HYPOTHECARY RIGHTS

2749. Creditors may not exercise their hypothecary rights before the period established in article 2758 for surrender of the property has expired.

1991, c. 64, s. 2749.

2750. Earlier ranking creditors take priority over later creditors when exercising their hypothecary rights.

An earlier ranking creditor may, however, be liable for payment of expenses of a later creditor if, after being notified of the exercise of a hypothecary right by the latter, he delays unreasonably before invoking the priority of his rights.

1991, c. 64, s. 2750.

2751. The creditor may exercise his hypothecary rights in whosever hands the property lies.

1991, c. 64, s. 2751.

2752. Where property charged with a hypothec subsequently comes under usufruct, the hypothecary rights shall be exercised against the bare owner and the usufructuary simultaneously, or notified to whichever of them they are not exercised against first.

1991, c. 64, s. 2752.

2753. A creditor whose hypothec charges more than one property may exercise his hypothecary rights simultaneously or successively against such properties as he sees fit.

1991, c. 64, s. 2753.

2754. Where later ranking creditors are secured by a hypothec on only one of the properties charged in favour of one and the same creditor, his hypothec is spread among them, where two or more of the properties are sold under judicial authority and the proceeds

still to be distributed are sufficient to pay his claim, proportionately over what remains to be distributed of their respective prices.

1991, c. 64, s. 2754.

2755. The holder of a floating hypothec may not exercise his hypothecary rights until after registration of notice of crystallization.

1991, c. 64, s. 2755.

2756. The holder of a movable hypothec with delivery on shares of the capital stock of a legal person need not notify the person who issued the shares of his right, but the exercise of his hypothecary rights is, in all cases, subject to the provisions and agreements governing the transfer of the hypothecated shares.

1991, c. 64, s. 2756.

SECTION III

PRELIMINARY MEASURES

§1. — Prior notice

2757. A creditor intending to exercise a hypothecary right shall file a prior notice at the registry office, together with evidence that it has been served on the debtor and, where applicable, on the grantor and on any other person against whom he intends to exercise his right.

Registration of such a notice is made in accordance with the Book on Publication of Rights.

1991, c. 64, s. 2757.

2758. In a prior notice of the exercise of a hypothecary right, any failure by the debtor to fulfil his obligations shall be indicated, together with a reminder, where necessary, that the debtor or a third person has a right to remedy the default. In addition, the amount of the claim in capital and interest, if any, and the nature of the hypothecary right which the creditor intends to exercise shall be included in the notice, together with a description of the charged property and a call on the person against whom the right is to be exercised to surrender the property before the expiry of the period specified in the notice.

This period is of twenty days after registration of the notice in the case of a movable property, sixty days in the case of an immovable property, or ten days if the creditor intends to take possession of the property; however, the period is of thirty days in the case of a notice relating to movable property charged with a hypothec constituted by an act accessory to a consumer contract.

1991, c. 64, s. 2758; 1998, c. 5, s. 12.

2759. A dealer in securities who, as creditor, has a hypothec on the securities he holds for

his debtor may, in the ordinary course of his duties and where allowed by the regulations and usages observed where he trades and by his agreement with his debtor, sell the securities or take them in payment without giving prior notice or observing any time limits prescribed in this Title.

1991, c. 64, s. 2759.

2760. The voluntary alienation of property charged with a hypothec, effected after the creditor has registered a prior notice of the exercise of a hypothecary right, may not be set up against the creditor unless the acquirer, with the consent of the creditor, personally assumes the debt, or unless a sum sufficient to cover the amount of the debt, interest and costs due to the creditor is deposited.

1991, c. 64, s. 2760.

§2. — *Rights of the debtor or person against whom a hypothecary right is exercised*

2761. A debtor or a person against whom a hypothecary right is exercised, or any other interested person, may defeat exercise of the right by paying the creditor the amount due to him or, where that is the case, by remedying the omission or breach set forth in the prior notice and any subsequent omission or breach, and, in either case, by paying the costs incurred.

This right may be exercised before the property is taken in payment or sold, or, if the right exercised is taking in possession, at any time.

1991, c. 64, s. 2761.

2762. A creditor having given prior notice of the exercise of a hypothecary right is not entitled to demand any indemnity from the debtor except interest owing and costs.

Notwithstanding any stipulation to the contrary, costs exclude extra-judicial professional fees payable by the creditor for services required by the creditor in order to recover the capital and interest secured by the hypothec or to conserve the charged property.

1991, c. 64, s. 2; 2002, c. 19, s. 12.

§3. — *Surrender*

2763. Surrender is voluntary or forced.

1991, c. 64, s. 2763.

2764. Surrender is voluntary where, before the period indicated in the prior notice expires, the person against whom the hypothecary right is exercised abandons the property to the creditor in order that the creditor may take possession of it or consents in writing to turn it over to the creditor at the agreed time.

If the hypothecary right exercised is taking in payment, voluntary surrender shall be attested

in a deed made by the person surrendering the property and accepted by the creditor.

1991, c. 64, s. 2764; 2000, c. 42, s. 6.

2765. Surrender is forced where the court orders it after ascertaining the existence of the claim, the debtor's default, the refusal to surrender voluntarily and the absence of a valid cause for objection.

The judgment fixes the period within which surrender shall be effected, determines the manner of effecting it and designates the person in whose favour it is carried out.

1991, c. 64, s. 2765.

2766. If the good faith of the creditor or his capacity to administer or ability to sell the property to which his motion of surrender applies is challenged, the court may order the creditor to furnish a surety to guarantee performance of his obligations.

1991, c. 64, s. 2766.

2767. Surrender is also forced where the court, on a motion of the creditor, orders surrender of the property before the period indicated in the prior notice expires, where there is reason to fear that otherwise recovery of his claim may be endangered, or where the property may perish or deteriorate rapidly. In the latter cases, the creditor is authorized to exercise his hypothecary rights immediately.

The motion need not be served on the person against whom the hypothecary right is exercised, but the order shall be served on him. If the order is subsequently rescinded, the creditor is bound to return the property or pay back the price of alienation.

1991, c. 64, s. 2767.

2768. A creditor who has obtained surrender of the property has simple administration thereof until the hypothecary right he intends to exercise has in fact been exercised.

1991, c. 64, s. 2768.

2769. The person against whom the hypothecary right is exercised and who is not responsible for the debt becomes personally liable therefor if he fails to surrender the property within the time allotted by the judgment.

1991, c. 64, s. 2769.

2770. Where the person against whom the hypothecary right is exercised has a prior claim by reason of his right to hold the movable property, he is bound to surrender it, subject to his priority.

1991, c. 64, s. 2770.

2771. The person against whom the hypothecary right is exercised may, where he has

received the property in payment of his prior or hypothecary claim, which is anterior to the claim contemplated in the prior notice, or where he has paid the prior or hypothecary claims anterior to his own, require that the creditor himself sell the property or cause it to be sold by court order; he is then bound to surrender the property only subject to the creditor's giving him security that the property will be sold at a sufficient price to ensure full payment of his anterior prior or hypothecary claim.

1991, c. 64, s. 2771.

2772. Real rights which the person against whom the hypothecary right is exercised had in the property when he acquired it, or that he extinguished while it was in his possession, revive after surrender unless they have been cancelled.

1991, c. 64, s. 2772.

SECTION IV

TAKING POSSESSION FOR PURPOSES OF ADMINISTRATION

2773. A creditor who holds a hypothec on the property of an enterprise may temporarily take possession of the hypothecated property and administer it or generally delegate its administration to a third person. The creditor or the person to whom he has delegated the administration acts in such a case as administrator of the property of others entrusted with full administration.

1991, c. 64, s. 2773.

2774. The taking of possession of a property does not affect the rights of the lessee.

1991, c. 64, s. 2774.

2775. Taking of possession terminates under the same circumstances as administration of the property of others, and also where the creditor is satisfied with his claim in capital, interest and costs, or where he fails in the attempt to exercise his right, or where the creditor has published a prior notice of the exercise of another hypothecary right. The bankruptcy of the person against whom the hypothecary right is exercised does not terminate taking of possession.

1991, c. 64, s. 2775.

2776. When possession ends, the creditor shall render account of his administration and, unless he has published a prior notice of the exercise of another hypothecary right, return the property in possession to the person against whom the hypothecary right was exercised, or to his successors, at the previously agreed place or, failing that, at the place where it is.

He registers a notice of return of property in the proper register.

1991, c. 64, s. 2776.

2777. A creditor who has, through his administration, obtained payment of the debt, is bound to return to the person against whom the hypothecary right was exercised, in addition to the property, any surplus remaining in his hands after payment of the debt, the expenses of administration and the costs incurred for the exercise of possession of the property.

1991, c. 64, s. 2777.

SECTION V

TAKING IN PAYMENT

2778. Where, at the time of registration of the creditor's prior notice, the debtor has already discharged one-half or more of the obligation secured by the hypothec, the creditor shall obtain authorization from the court before taking property in payment, except where the person against whom the right is exercised has voluntarily surrendered the property.

1991, c. 64, s. 2778.

2779. Subsequent hypothecary creditors or the debtor may, within the time allotted for surrender, require the creditor to abandon the taking in payment and sell the property himself or have it sold by judicial authority; they shall have registered a notice beforehand to that effect, reimbursed the creditor for the costs he has incurred and advanced the amounts needed for the sale of the property.

The notice shall be served on the creditor, the grantor or the debtor and the person against whom the hypothecary right is exercised, and registration thereof is made in accordance with the Book on Publication of Rights.

Subsequent creditors who require the creditor to proceed with the sale shall also furnish him with a security guaranteeing that the property will be sold at a sufficiently high price to enable his claim to be paid in full.

1991, c. 64, s. 2779; 1992, c. 57, s. 716; 2002, c. 19, s. 15.

2780. A creditor required to sell shall proceed to do so unless he prefers to pay the subsequent creditors who registered the notice, or, if the notice was registered by the debtor, unless the court authorizes the creditor to take the property in payment on such conditions as it determines.

If the creditor does not act, the court may allow the person who registered the notice requiring the sale, or any other person designated by him, to proceed with it.

1991, c. 64, s. 2780.

2781. Where the default has not been remedied or the payment has not been made in the time allotted for surrender, the creditor takes the property in payment by the effect of the judgment of surrender, or of a deed voluntarily made by the person against whom the hypothecary right is exercised, and accepted by the creditor, if neither the subsequent

creditors nor the debtor have required him to proceed with the sale.

The judgment of surrender or the deed voluntarily made and accepted constitutes the creditor's title of ownership.

1991, c. 64, s. 2781; 2000, c. 42, s. 7.

2782. Taking in payment extinguishes the obligation.

A creditor who has taken property in payment may not claim what he pays to a prior or hypothecary creditor whose claim is preferred to his. In such a case, he is not entitled to subrogation against his former debtor.

1991, c. 64, s. 2782.

2783. A creditor who has taken property in payment becomes the owner of it from the time of registration of prior notice. He takes it as it then stood, but free of all hypothecs published after his.

Real rights created after registration of the notice may not be set up against the creditor if he did not consent to them.

1991, c. 64, s. 2783; 1992, c. 57, s. 716.

SECTION VI

SALE BY THE CREDITOR

2784. A creditor who holds a hypothec on the property of an enterprise and who has filed a prior notice at the registry office indicating his intention to sell the charged property himself may, after obtaining surrender of the property, proceed with the sale by agreement, by a call for tenders or by public auction.

1991, c. 64, s. 2784.

2785. The creditor shall sell the property without unnecessary delay, at a commercially reasonable price, and in the best interest of the person against whom the hypothecary right is exercised.

If there is more than one property, he may sell them together or separately.

1991, c. 64, s. 2785.

2786. A creditor who sells the property himself acts in the name of the owner and is bound to declare his quality to the purchaser at the time of the sale.

1991, c. 64, s. 2786.

2787. A creditor who proceeds by a call for tenders may do so through the newspapers or

by invitation.

Sufficient information shall be included in the call for tenders to enable any interested person to make an offer at the proper time and place.

The creditor is bound to accept the highest offer unless the conditions attached to it render it less advantageous than another lower offer, or unless the price offered is not commercially reasonable.

1991, c. 64, s. 2787.

2788. A creditor who proceeds with a sale by public auction shall hold it at the date, time and place fixed in the notice of sale served on the person against whom the hypothecary right is exercised and the grantor and notified to the other creditors who have published their right in respect of the property.

He shall also inform any interested person who requests such information of what he is doing.

1991, c. 64, s. 2788.

2789. The creditor imputes the proceeds of the sale to payment of the costs of exercising the right, payment of the claims prior to his rights, and, finally, payment of his claim.

If other creditors have rights to be claimed, the creditor who sold the property renders account of the proceeds of the sale to the clerk of the competent court and remits what remains of the price after imputation; where no such creditors exist, he shall, within ten days, render account of the proceeds of the sale to the owner of the property and remit any surplus to him; the rendering of account may be opposed in the manner established in the Code of Civil Procedure.

Where the proceeds of the sale are insufficient to pay his claim and costs, the creditor retains a claim against his debtor for the balance due to him.

1991, c. 64, s. 2789.

2790. The purchaser takes the property subject to the real rights charging it at the time of registration of the prior notice, except the hypothec of the creditor who sold the property and the claims which ranked ahead of his rights.

Real rights created after registration of the prior notice may not be set up against the purchaser if he did not consent to them.

1991, c. 64, s. 2790.

SECTION VII

SALE BY JUDICIAL AUTHORITY

2791. A sale takes place by judicial authority where the court designates the person who will proceed with it, fixes the conditions and charges of the sale, indicates whether it may be made by agreement, a call for tenders or public auction and, if it considers it expedient, after enquiring as to the value of the property, fixes the upset price.

1991, c. 64, s. 2791.

2792. No creditor may require that the sale be subject to his hypothec.

1991, c. 64, s. 2792.

2793. The person entrusted with the sale of the property is bound to observe the rules prescribed in the Code of Civil Procedure for the sale of the property of another and, in addition to inform the interested parties of the steps he is taking if they require him to do so.

The person acts in the name of the owner and is bound to declare his quality to the purchaser.

1991, c. 64, s. 2793.

2794. Sale by judicial authority purges the real rights to the extent provided by the Code of Civil Procedure in respect of the effect of the order to sell.

1991, c. 64, s. 2794.

CHAPTER VI

EXTINCTION OF HYPOTHECS

2795. Hypothecs are extinguished by the loss, change of nature, exclusion from being an object of commerce or expropriation of the charged property, where such events affect the property as a whole.

1991, c. 64, s. 2795.

2796. Where a movable property is incorporated in an immovable, the movable hypothec may subsist as an immovable hypothec, notwithstanding the change of nature of the property, provided it is registered in the land register; it is ranked according to the rules set out in the Book on Publication of Rights.

1991, c. 64, s. 2796.

2797. A hypothec is extinguished by the extinction of the obligation whose performance it secures. In the case of a line of credit or in any other case where the debtor obligates himself again under a provision of the deed of hypothec, the hypothec, unless cancelled, subsists notwithstanding the extinction of the obligation.

1991, c. 64, s. 2797.

2798. A movable hypothec is extinguished not later than ten years after the date of its registration or registration of a notice giving it effect or renewing it.

Pledge is extinguished upon termination of detention.

1991, c. 64, s. 2798.

2799. An immovable hypothec is extinguished not later than thirty years after the date of its registration or registration of a notice giving it effect or renewing it.

This rule does not apply in the case of hypothecs securing the price of emphyteusis, a rent constituted for the price of an immovable, a life annuity or a usufruct for life, hypothecs given in favour of La Financière agricole du Québec or the Société d'habitation du Québec, or hypothecs in favour of a person holding a power of attorney from the creditors to secure payment of bonds or other evidences of indebtedness.

1991, c. 64, s. 2799; 2000, c. 42, s. 8; 2000, c. 53, a. 67.

2800. The legal hypothec of a syndicate of co-owners on the fraction of a co-owner is extinguished three years after it is registered, unless the syndicate publishes an action in default against the owner to preserve it or registers a prior notice of the exercise of a hypothecary right.

1991, c. 64, s. 2800.

2801. Where a hypothecary creditor takes the hypothecated property in payment, the hypothec of the creditors ranking behind him is not extinguished except by registration of the deed voluntarily made and accepted or of the judgment of surrender.

1991, c. 64, s. 2801; 2000, c. 42, s. 9.

2802. Other causes of extinction of hypothecs are provided by law.

1991, c. 64, s. 2802.

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BOOK SEVEN

EVIDENCE

TITLE ONE

GENERAL RULES OF EVIDENCE

CHAPTER I

GENERAL PROVISIONS

2803. A person wishing to assert a right shall prove the facts on which his claim is based.

A person who alleges the nullity, modification or extinction of a right shall prove the facts on which he bases his allegation.

1991, c. 64, s. 2803.

2804. Evidence is sufficient if it renders the existence of a fact more probable than its non-existence, unless the law requires more convincing proof.

1991, c. 64, s. 2804.

2805. Good faith is always presumed, unless the law expressly requires that it be proved.

1991, c. 64, s. 2805.

CHAPTER II

JUDICIAL NOTICE

2806. No proof is required of a matter of which judicial notice shall be taken.

1991, c. 64, s. 2806.

2807. Judicial notice shall be taken of the law in force in Québec.

However, statutory instruments in force in Québec but not published in the *Gazette officielle du Québec* or in any other manner prescribed by law, international treaties and agreements applicable to Québec but not contained in a text of law, and customary international law, shall be pleaded.

1991, c. 64, s. 2807.

2808. Judicial notice shall be taken of any fact that is so generally known that it cannot reasonably be questioned.

1991, c. 64, s. 2808.

2809. Judicial notice may be taken of the law of other provinces or territories of Canada and of that of a foreign state, provided it has been pleaded. The court may also require that proof be made of such law; this may be done, among other means, by expert testimony or by the production of a certificate drawn up by a jurisconsult.

Where such law has not been pleaded or its content has not been established, the court applies the law in force in Québec.

1991, c. 64, s. 2809; 2002, c. 19, s. 15.

2810. The court may, in any matter, take judicial notice of the facts in dispute in the presence of the parties or where the parties have been duly called. It may make any verifications it considers necessary and go to the scene, if need be.

1991, c. 64, s. 2810.

TITLE TWO

PROOF

2811. Proof of a fact or juridical act may be made by a writing, by testimony, by presumption, by admission or by the production of material things, according to the rules set forth in this Book and in the manner provided in the Code of Civil Procedure or in any other Act.

1991, c. 64, s. 2811.

CHAPTER I

WRITINGS

SECTION I

COPIES OF STATUTES

2812. Copies of statutes which have been or are in force in Canada, attested by a competent public officer or published by an authorized publisher, make proof of the existence and content of such statutes, and neither the signature or seal appended to such a copy nor the quality of the officer or publisher need be proved.

1991, c. 64, s. 2812.

SECTION II

AUTHENTIC ACTS

2813. An authentic act is one that has been received or attested by a competent public officer according to the laws of Québec or of Canada, with the formalities required by law.

Every act whose material appearance satisfies such requirements is presumed to be authentic.

1991, c. 64, s. 2813.

2814. The following documents in particular are authentic if they conform to the requirements of law:

- (1) official documents of the Parliament of Canada or the Parliament of Québec;
- (2) official documents issued by the government of Canada or of Québec, such as letters patent, orders and proclamations;
- (3) records of the courts of justice having jurisdiction in Québec;
- (4) records of and official documents issued by municipalities and other legal persons established in the public interest by an Act of Québec;
- (5) public records required by law to be kept by public officers;
- (6) notarial acts;
- (7) minutes of determination of boundaries.

1991, c. 64, s. 2814.

2815. A copy of the original of an authentic act or, where the original is lost, a copy of an authentic copy of the act is authentic if it is attested by the public officer having custody of it.

1991, c. 64, s. 2815.

2816. Where the original of a document entered in a register kept as required by law, and retained by the officer in charge of the register, is lost or in the possession of the adverse party or of a third person without collusion on the part of the person invoking it, the copy of the document is also authentic if it is attested by the public officer having custody of it or, if it has been deposited or filed in the Archives nationales, by the Keeper of the Archives nationales du Québec.

1991, c. 64, s. 2816.

2817. An extract which textually reproduces part of an authentic act is itself authentic if it is certified by the person having lawful custody of the act, provided the extract bears its date of issue and indicates the date, nature and place of execution of the original act and, where such is the case, the names of the parties and of the public officer who drew it up.

1991, c. 64, s. 2817.

2818. The recital, in an authentic act, of the facts which the public officer had the task of observing or recording makes proof against all persons.

1991, c. 64, s. 2818.

2819. To be authentic, a notarial act shall be signed by all the parties; it then makes proof against all persons of the juridical act which it sets forth and of those declarations of the parties which directly relate to the act.

Where the parties are unable to sign, their declaration or consent shall be given before a witness who signs. Minors, persons of full age who are unable to give consent and persons who have an interest in the act may not be witnesses.

1991, c. 64, s. 2819.

2820. An authentic copy of a document makes proof against all persons of its conformity to the original and replaces it.

An authentic extract makes proof of its conformity to the part of the document which it reproduces.

1991, c. 64, s. 2820.

2821. Improbation is necessary only to contradict the recital in the authentic act of the facts which the public officer had the task of observing.

Improbation is not required to contest the quality of the public officer or witnesses or the signature of the public officer.

1991, c. 64, s. 2821.

SECTION III

SEMI-AUTHENTIC ACTS

2822. An act purporting to be issued by a competent foreign public officer makes proof of its content against all persons and neither the quality nor the signature of the officer need be proved.

Similarly, a copy of a document in the custody of the foreign public officer makes proof of its conformity to the original against all persons, and replaces the original if it purports to be issued by the officer.

1991, c. 64, s. 2822.

2823. A power of attorney under a private writing made outside Québec also makes proof against all persons where it is certified by a competent public officer who has verified the identity and signature of the mandator.

1991, c. 64, s. 2823.

2824. Acts, copies and powers of attorney mentioned in this section may be deposited with a notary, who may then issue copies of them.

Such a copy makes proof of its conformity to the deposited document and replaces it.

1991, c. 64, s. 2824.

2825. Where an act or copy issued by a foreign public officer or a power of attorney certified by a foreign public officer has been contested, the person invoking it has the burden of proving that it is authentic.

1991, c. 64, s. 2825.

SECTION IV

PRIVATE WRITINGS

2826. A private writing is a writing setting forth a juridical act and bearing the signature of the parties; it is not subject to any other formality.

1991, c. 64, s. 2826.

2827. A signature is the affixing by a person, to a writing, of his name or the distinctive mark which he regularly uses to signify his intention.

1991, c. 64, s. 2827; 2001, c. 32, s. 77.

2828. A person who invokes a private writing has the burden of proving it.

Where a writing is set up against the person purporting to have signed it or his heirs, it is presumed to be admitted unless it is contested in the manner provided in the Code of Civil Procedure.

1991, c. 64, s. 2828.

2829. A private writing makes proof, in respect of the persons against whom it is proved, of the juridical act which it sets forth and of the statements of the parties directly relating to the act.

1991, c. 64, s. 2829.

2830. A private writing does not make proof of its date against third persons but that date may be established against them in any manner.

However, writings relating to acts carried out in the ordinary course of business of an enterprise are presumed to have been made on the date they bear.

1991, c. 64, s. 2830.

SECTION V

OTHER WRITINGS

2831. An unsigned writing regularly used in the ordinary course of business of an enterprise to evidence a juridical act makes proof of its content.

1991, c. 64, s. 2831.

2832. A writing that is neither authentic nor semi-authentic which relates a fact is admissible as proof against the person who wrote it, subject to the rules of this Book, by way of testimony or admission.

1991, c. 64, s. 2832.

2833. A domestic paper stating that payment has been received or mentioning that it supplies the lack of a title in favour of the person for whose benefit it sets forth an obligation makes proof against the person who wrote it.

1991, c. 64, s. 2833.

2834. A release, although unsigned and undated, inscribed by a creditor on the title of his debt or on a copy thereof which has always remained in his possession makes proof against him.

The release is not admissible in proof of payment, however, if it has the effect of withdrawing the debt from the rules governing prescription.

1991, c. 64, s. 2834.

2835. A person who invokes an unsigned writing shall prove that it originates from the person whom he claims to be its author.

1991, c. 64, s. 2835.

2836. Writings contemplated in this section may be contested in any manner.

1991, c. 64, s. 2836.

SECTION VI

MEDIA FOR WRITINGS AND TECHNOLOGICAL NEUTRALITY

2001, c. 32, s. 78.

2837. A writing is a means of proof whatever the medium, unless the use of a specific medium or technology is required by law.

Where a writing is in a medium that is based on information technology, the writing is referred to as a technology-based document within the meaning of the Act to establish a legal framework for information technology.

1991, c. 64, s. 2837; 2001, c. 32, s. 78.

2838. In addition to meeting all other legal requirements, the integrity of a copy of a statute, an authentic writing, a semi-authentic writing or a private writing drawn up in a medium based on information technology must be ensured for it to be used to adduce proof in the same way as a writing of the same kind drawn up as a paper document.

1991, c. 64, s. 2838; 2001, c. 32, s. 78.

2839. The integrity of a document is ensured if it is possible to verify that the information it contains has not been altered and has been maintained in its entirety, and that the medium used provides stability and the required perennity to the information.

Where the medium or technology used does not allow the integrity of the document to be confirmed or denied, the document may, depending on the circumstances, be admitted as testimonial evidence or real evidence and serve as commencement of proof.

1991, c. 64, s. 2839; 1992, c. 57, s. 716; 2001, c. 32, s. 78.

2840. It is not necessary to prove that the medium of a document or that the processes, systems or technology used to communicate by means of a document ensure its integrity, unless the person contesting the admission of the document establishes, upon a preponderance of evidence, that the integrity of the document has been affected.

1991, c. 64, s. 2840; 2001, c. 32, s. 78.

SECTION VII

COPIES AND DOCUMENTS RESULTING FROM A TRANSFER

2001, c. 32, s. 78.

2841. A document may be reproduced either by generating a copy in the same medium or in a medium that is based on the same technology, or by transferring the information contained in the document to a medium based on different technology.

Where it reproduces an original document or a technology-based document fulfilling the functions of an original as provided for in section 12 of the Act to establish a legal framework for information technology, a copy, provided it is certified, or a document resulting from the transfer of information, provided it is documented, may legally replace the reproduced document.

In the case of a document in the possession of the State, a legal person, a partnership or an association, certification is effected by a person in authority or the person responsible for document retention.

1991, c. 64, s. 2841; 2001, c. 32, s. 78.

2842. A certified copy is supported, if necessary, by a statement establishing the circumstances and the date of the reproduction, attesting that the copy contains the same information as the reproduced document and indicating the means used to ensure the integrity of the copy. The statement is made by the person responsible for document reproduction or by the person who reproduced the document.

A document resulting from the transfer of information is supported, if necessary, by the documentation referred to in section 17 of the Act to establish a legal framework for information technology.

1991, c. 64, s. 2842; 2001, c. 32, s. 78.

CHAPTER II

TESTIMONY

2843. Testimony is a statement whereby a person relates facts of which he has personal knowledge or whereby an expert gives his opinion.

To make proof, testimony shall be given by deposition in a judicial proceeding unless otherwise agreed by the parties or provided by law.

1991, c. 64, s. 2843.

2844. Proof by testimony may be adduced by a single witness.

A child who, in the opinion of the judge, does not understand the nature of an oath, may be permitted to testify without that formality, if the judge is of the opinion that he is sufficiently mature to be able to report the facts of which he had knowledge, and that he understands the duty to tell the truth. However, a judgment may not be based upon such testimony alone.

1991, c. 64, s. 2844.

2845. The probative force of testimony is left to the appraisal of the court.

1991, c. 64, s. 2845.

CHAPTER III

PRESUMPTIONS

2846. A presumption is an inference established by law or the court from a known fact to an unknown fact.

1991, c. 64, s. 2846.

2847. A legal presumption is one that is specially attached by law to certain facts; it exempts the person in whose favour it exists from making any other proof.

A presumption concerning presumed facts is simple and may be rebutted by proof to the contrary; a presumption concerning deemed facts is absolute and irrebuttable.

1991, c. 64, s. 2847.

2848. The authority of a final judgment (*res judicata*) is an absolute presumption; it applies only to the object of the judgment when the demand is based on the same cause and is between the same parties acting in the same qualities and the thing applied for is the same.

However, a judgment deciding a class action has the authority of a final judgment in respect of the parties and the members of the group who have not excluded themselves therefrom.

1991, c. 64, s. 2848.

2849. Presumptions which are not established by law are left to the discretion of the court which shall take only serious, precise and concordant presumptions into consideration.

1991, c. 64, s. 2849.

CHAPTER IV

ADMISSIONS

2850. An admission is the acknowledgment of a fact which may produce legal consequences against the person who makes it.

1991, c. 64, s. 2850.

2851. An admission may be express or implied.

An admission may not be inferred from mere silence, however, except in the cases provided by law.

1991, c. 64, s. 2851.

2852. An admission made by a party to a dispute or by an authorized mandatory makes proof against him if it is made in the proceeding in which it is invoked. It may not be revoked, unless it is proved to have been made through an error of fact.

The probative force of any other admission is left to the appraisal of the court.

1991, c. 64, s. 2852.

2853. An admission may not be divided except where it contains facts which are foreign to the issue, or where the part of the admission objected to is improbable or contradicted by indications of bad faith or by contrary evidence, or where the facts contained in the admission are unrelated to each other.

1991, c. 64, s. 2853.

CHAPTER V

PRODUCTION OF MATERIAL THINGS

2854. The production of material things is a means of proof which allows the judge to make his own findings. Such a material thing may consist of an object, as well as the sense impression of an object, fact or place.

1991, c. 64, s. 2854.

2855. The production of material things does not have probative force until their authenticity has been established by separate proof. However, where the material thing produced is a technology-based document within the meaning of the Act to establish a legal framework for information technology, authenticity need only be established in cases to which the third paragraph of section 5 of that Act applies.

1991, c. 64, s. 2855; 2001, c. 32, s. 79.

2856. The court may draw any inference it considers reasonable from the production of a material thing.

1991, c. 64, s. 2856.

TITLE THREE

ADMISSIBILITY OF EVIDENCE AND PROOF

CHAPTER I

EVIDENCE

2857. All evidence of any fact relevant to a dispute is admissible and may be presented by any means.

1991, c. 64, s. 2857.

2858. The court shall, even of its own motion, reject any evidence obtained under such circumstances that fundamental rights and freedoms are breached and that its use would tend to bring the administration of justice into disrepute.

The latter criterion is not taken into account in the case of violation of the right of professional privilege.

1991, c. 64, s. 2858.

CHAPTER II

PROOF

2859. The court may not of its own motion invoke grounds of inadmissibility under this chapter which a party who is present or represented has failed to invoke.

1991, c. 64, s. 2859.

2860. A juridical act set forth in a writing or the content of a writing shall be proved by the production of the original or a copy which legally replaces it.

However, where a party acting in good faith and with dispatch is unable to produce the original of a writing or a copy which legally replaces it, proof may be made by any other means.

In the case of technology-based documents, the functions of the original are fulfilled by a document meeting the requirements of section 12 of the Act to establish a legal framework for information technology and the functions of the copy replacing the original are fulfilled by a certified copy of the document meeting the requirements of section 16 of that Act.

1991, c. 64, s. 2860; 2001, c. 32, s. 80.

2861. Where a party has been unable, for a valid reason, to produce written proof of a juridical act, such an act may be proved by any other means.

1991, c. 64, s. 2861.

2862. Proof of a juridical act may not be made, between the parties, by testimony where the value in dispute exceeds \$1 500.

However, failing proof in writing and regardless of the value in dispute, proof may be made by testimony of any juridical act where there is a commencement of proof; proof may also be made by testimony, against a person, of a juridical act carried out by him in the ordinary course of business of an enterprise.

1991, c. 64, s. 2862.

2863. The parties to a juridical act set forth in a writing may not contradict or vary the terms of the writing by testimony unless there is a commencement of proof.

1991, c. 64, s. 2863.

2864. Proof by testimony is admissible to interpret a writing, to complete a clearly incomplete writing or to impugn the validity of the juridical act which the writing sets forth.

1991, c. 64, s. 2864.

2865. A commencement of proof may arise where an admission or writing of the adverse party, his testimony or the production of a material thing gives an indication that the alleged fact may have occurred.

1991, c. 64, s. 2865.

2866. No proof is admitted to rebut a legal presumption where, on the ground of such presumption, the law annuls certain acts or disallows an action, unless the law has reserved the right to make proof to the contrary.

However, the presumption, if not of public order, may be rebutted by an admission made during the proceeding in which the presumption is invoked.

1991, c. 64, s. 2866.

2867. An admission made outside the proceeding in which it is invoked is proved by the means admissible as proof of the fact which is its object.

1991, c. 64, s. 2867.

2868. Proof by the production of a material thing is admissible in accordance with the relevant rules on admissibility as proof of the object, the fact or the place represented by it.

1991, c. 64, s. 2868.

CHAPTER III

CERTAIN STATEMENTS

2869. A statement made by a person who does not testify in a judicial proceeding or by a witness prior to a judicial proceeding is admissible as testimony if the parties consent thereto; a statement that meets the requirements of this chapter or of the law is also admissible as testimony.

1991, c. 64, s. 2869.

2870. A statement made by a person who does not appear as a witness, concerning facts to which he could legally testify, is admissible as testimony on application and after notice is given to the adverse party, provided the court authorizes it.

The court shall, however, ascertain that it is impossible for the declarant to appear as a witness, or that it is unreasonable to require him to do so, and that the reliability of the statement is sufficiently guaranteed by the circumstances in which it is made.

The reliability of documents drawn up in the ordinary course of business of an enterprise, of documents entered in a register kept as required by law and of spontaneous and contemporaneous statements concerning the occurrence of facts is, in particular, presumed to be sufficiently guaranteed.

1991, c. 64, s. 2870.

2871. Previous statements by a person who appears as a witness, concerning facts to which he may legally testify, are admissible as testimony if their reliability is sufficiently guaranteed.

1991, c. 64, s. 2871.

2872. Statements thus made shall be proved by producing the writing.

No other statement may be proved except by the testimony of the declarant or of the persons having had personal knowledge of it, unless otherwise provided in articles 2873 and 2874.

1991, c. 64, s. 2872.

2873. A statement recorded in writing by a person other than the declarant may be proved by producing the writing if the declarant has acknowledged that the writing faithfully reproduces his statement.

The same rule applies where the writing was drawn up at the request of the declarant or by a person acting in the performance of his duties, if there is reason to presume, having regard to the circumstances, that the writing accurately reproduces the statement.

1991, c. 64, s. 2873.

2874. A statement recorded on magnetic tape or by any other reliable recording technique may be proved by such means, provided its authenticity is separately proved. However, where the recording is a technology-based document within the meaning of the Act to

establish a legal framework for information technology, authenticity need only be established in cases to which the third paragraph of section 5 of that Act applies.

1991, c. 64, s. 2874; 2001, c. 32, s. 81.

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CIVIL CODE OF QUÉBEC

S.Q., 1991, c. 64.

updated to January 1, 2003
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BOOK EIGHT

PRESCRIPTION

TITLE ONE

RULES GOVERNING PRESCRIPTION

CHAPTER I

GENERAL PROVISIONS

2875. Prescription is a means of acquiring or of being released by the lapse of time and according to the conditions fixed by law: prescription is called acquisitive in the first case and extinctive in the second.

1991, c. 64, s. 2875.

2876. That which is not an object of commerce, not transferable or not susceptible of appropriation by reason of its nature or appropriation may not be prescribed.

1991, c. 64, s. 2876.

2877. Prescription takes effect in favour of or against all persons, including the State, subject to express provision of law.

1991, c. 64, s. 2877.

2878. The court may not, of its own motion, supply the plea of prescription.

However, it shall, of its own motion, declare the remedy forfeited where so provided by law.

Such forfeiture is never presumed; it is effected only where it is expressly stated in the text.

1991, c. 64, s. 2878.

2879. The period of time required for prescription is reckoned by full days. The day on which prescription begins to run is not counted in computing such period.

Prescription is acquired only when the last day of the period has elapsed. Where the last day is a Saturday or a non-judicial day, prescription is acquired only on the following judicial day.

1991, c. 64, s. 2879.

2880. Dispossession fixes the beginning of the period of acquisitive prescription.

The day on which the right of action arises fixes the beginning of the period of extinctive prescription.

1991, c. 64, s. 2880.

2881. Prescription may be pleaded at any stage of judicial proceedings, even in appeal, unless the party who has not pleaded prescription has, in light of the circumstances, demonstrated his intention of renouncing it.

1991, c. 64, s. 2881.

2882. A ground of defence that may be raised to defeat an action may still be invoked, even if the time for using it by way of a direct action has expired, provided such ground could have constituted a valid defence to an action at the time when it could have served as the basis of a direct action.

Maintenance of this ground does not revive a direct action that is prescribed.

1991, c. 64, s. 2882.

CHAPTER II

RENUNCIATION OF PRESCRIPTION

2883. Prescription may not be renounced in advance, but prescription which has been acquired or any benefit of time elapsed by which prescription has begun may be renounced.

1991, c. 64, s. 2883.

2884. No prescriptive period other than that provided by law may be agreed upon.

1991, c. 64, s. 2884.

2885. Renunciation of prescription is either express or tacit; tacit renunciation results from

an act which implies the abandonment of an acquired right.

However, renunciation of prescription which has been acquired in respect of immovable real rights shall be published at the registry office.

1991, c. 64, s. 2885.

2886. A person who may not alienate may not renounce any prescription that is acquired.

1991, c. 64, s. 2886.

2887. Any person who has an interest in the acquisition of prescription may plead it, even if the debtor or the possessor renounces it.

1991, c. 64, s. 2887.

2888. Following renunciation, prescription begins to run again for the same period.

1991, c. 64, s. 2888.

CHAPTER III

INTERRUPTION OF PRESCRIPTION

2889. Prescription may be interrupted naturally or civilly.

1991, c. 64, s. 2889.

2890. Acquisitive prescription is interrupted naturally where the possessor is deprived of the enjoyment of the property for more than one year.

1991, c. 64, s. 2890.

2891. Extinctive prescription is interrupted naturally where the holder of a right, having failed to avail himself of it, exercises that right.

1991, c. 64, s. 2891.

2892. The filing of a judicial demand before the expiry of the prescriptive period constitutes a civil interruption, provided the demand is served on the person to be prevented from prescribing not later than sixty days following the expiry of the prescriptive period.

Cross demands, interventions, seizures and oppositions are considered to be judicial demands. The notice expressing the intention by one party to submit a dispute to arbitration is also considered to be a judicial demand, provided it describes the object of the dispute to be submitted and is served in accordance with the rules and time limits applicable to judicial demands.

1991, c. 64, s. 2892.

2893. Any application by a creditor to share in a distribution with other creditors also interrupts prescription.

1991, c. 64, s. 2893.

2894. Interruption does not occur if the application is dismissed, the suit discontinued or perempted.

1991, c. 64, s. 2894.

2895. Where the application of a party is dismissed without a decision having been made on the merits of the action and where, on the date of the judgment, the prescriptive period has expired or will expire in less than three months, the plaintiff has an additional period of three months from service of the judgment in which to claim his right.

The same applies to arbitration; the three-month period then runs from the time the award is made, from the end of the arbitrators' mandate, or from the service of the judgment annulling the award.

1991, c. 64, s. 2895.

2896. An interruption resulting from a judicial demand continues until the judgment acquires the authority of a final judgment (*res judicata*) or, as the case may be, until a transaction is agreed between the parties.

The interruption has effect with regard to all the parties in respect of any right arising from the same source.

1991, c. 64, s. 2896.

2897. An interruption which results from the bringing of a class action benefits all the members of the group who have not requested their exclusion from the group.

1991, c. 64, s. 2897.

2898. Acknowledgement of a right, as well as renunciation of the benefit of a period of time which has elapsed, interrupts prescription.

1991, c. 64, s. 2898.

2899. A judicial demand or any other act of interruption against the principal debtor or against a surety interrupts prescription with regard to both.

1991, c. 64, s. 2899.

2900. Interruption with regard to one of the creditors or debtors of a solidary or indivisible obligation has effect with regard to the others.

1991, c. 64, s. 2900.

2901. Interruption with regard to one of the joint creditors or debtors of a divisible obligation has no effect with regard to the others.

1991, c. 64, s. 2901.

2902. 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 the portion of that heir.

1991, c. 64, s. 2902.

2903. Following interruption, prescription begins to run again for the same period.

1991, c. 64, s. 2903.

CHAPTER IV

SUSPENSION OF PRESCRIPTION

2904. Prescription does not run against persons if it is impossible in fact for them to act by themselves or to be represented by others.

1991, c. 64, s. 2904.

2905. Prescription does not run against a child yet unborn.

Nor does it run against a minor or a person of full age under curatorship or tutorship with respect to remedies he may have against his representative or against the person entrusted with his custody.

1991, c. 64, s. 2905.

2906. Married or civil union spouses do not prescribe against each other during cohabitation.

1991, c. 64, s. 2906; 2002, c. 6, s. 59.

2907. Prescription does not run against an heir with respect to his claims against the succession.

1991, c. 64, s. 2907.

2908. A motion for leave to bring a class action suspends prescription in favour of all the members of the group for whose benefit it is made or, as the case may be, in favour of the group described in the judgment granting the motion.

The suspension lasts until the motion is dismissed or annulled or until the judgment granting the motion is set aside; however, a member requesting to be excluded from the action or who is excluded therefrom by the description of the group made by the judgment on the motion, an interlocutory judgment or the judgment on the action ceases to benefit from the suspension of prescription.

In the case of a judgment, however, prescription runs again only when the judgment is no longer susceptible of appeal.

1991, c. 64, s. 2908.

2909. Suspension of prescription of solidary claims and indivisible claims produces its effects in respect of creditors and debtors and their heirs in accordance with the rules applicable to interruption of prescription of such claims.

1991, c. 64, s. 2909.

TITLE TWO

ACQUISITIVE PRESCRIPTION

CHAPTER I

CONDITIONS OF ACQUISITIVE PRESCRIPTION

2910. Acquisitive prescription is a means of acquiring a right of ownership, or one of its dismemberments, through the effect of possession.

1991, c. 64, s. 2910.

2911. Acquisitive prescription requires possession in accordance with the conditions laid down in the Book on Property.

1991, c. 64, s. 2911.

2912. A successor by particular title may join to his possession that of his predecessors in order to complete prescription.

A successor by universal title or by general title continues the possession of his predecessor.

1991, c. 64, s. 2912.

2913. Detention does not serve as the basis for prescription, even if it extends beyond the term agreed upon.

1991, c. 64, s. 2913.

2914. A precarious title may be interverted by a title proceeding from a third person or by

an act performed by the holder which is incompatible with precarious holding.

Interversion renders the possession available for prescription from the time the owner learns of the new title or of the act of the holder.

1991, c. 64, s. 2914.

2915. Third persons may prescribe against the owner of property during its dismemberment or when it is held precariously.

1991, c. 64, s. 2915.

2916. The institute and his successors by universal title or by general title do not prescribe against the substitute before the opening of the substitution.

1991, c. 64, s. 2916.

CHAPTER II

PERIODS OF ACQUISITIVE PRESCRIPTION

2917. The period for acquisitive prescription is ten years, except as otherwise fixed by law.

1991, c. 64, s. 2917.

2918. A person who has for ten years possessed an immovable as its owner may acquire the ownership of it only upon a judicial demand.

1991, c. 64, s. 2918; 2000, c. 42, s. 10.

2919. The possessor in good faith of movable property acquires the ownership of it by three years running from the dispossession of the owner.

Until the expiry of that period, the owner may revendicate the movable property, unless it has been acquired under judicial authority.

1991, c. 64, s. 2919.

2920. To prescribe, a subsequent acquirer need have been in good faith only at the time of the acquisition, even where his effective possession began only after that time.

The same applies where there is joinder of possession, with respect to each previous acquirer.

1991, c. 64, s. 2920.

TITLE THREE

EXTINCTIVE PRESCRIPTION

2921. Extinctive prescription is a means of extinguishing a right which has not been used or of pleading the non-admissibility of an action.

1991, c. 64, s. 2921.

2922. The period for extinctive prescription is ten years, except as otherwise fixed by law.

1991, c. 64, s. 2922.

2923. Actions to enforce immovable real rights are prescribed by ten years.

However, an action to retain or obtain possession of an immovable may be brought only within one year from the disturbance or dispossession.

1991, c. 64, s. 2923.

2924. A right resulting from a judgment is prescribed by ten years if it is not exercised.

1991, c. 64, s. 2924.

2925. An action to enforce a personal right or movable real right is prescribed by three years, if the prescriptive period is not otherwise established.

1991, c. 64, s. 2925.

2926. Where the right of action arises from moral, corporal or material damage appearing progressively or tardily, the period runs from the day the damage appears for the first time.

1991, c. 64, s. 2926.

2927. In an action in nullity of contract, the prescriptive period runs from the day the person invoking the cause of nullity becomes aware of such cause or, in the case of violence or fear, from the day it ceases.

1991, c. 64, s. 2927.

2928. The application by a surviving spouse for the fixing of the compensatory allowance is prescribed by one year from the death of his spouse.

1991, c. 64, s. 2928.

2929. An action for defamation is prescribed by one year from the day on which the defamed person learned of the defamation.

1991, c. 64, s. 2929.

2930. Notwithstanding any stipulation to the contrary, where an action is founded on the obligation to make reparation for bodily injury caused to another, the requirement that notice

be given prior to the bringing of the action or that proceedings be instituted within a period not exceeding three years does not hinder a prescriptive period provided for by this Book.

1991, c. 64, s. 2930.

2931. In the case of a contract of successive performance, prescription runs in respect of payments due, even though the parties continue to perform one or another of their obligations under the contract.

1991, c. 64, s. 2931.

2932. In an action to reduce an obligation which is performed successively, the prescriptive period runs from the day the obligation becomes exigible, whether the obligation arises from a contract, the law or a judgment.

1991, c. 64, s. 2932.

2933. No holder may be released by prescription from the prestation attached to his detention; the amount may be prescribed, however, as may the instalments.

1991, c. 64, s. 2933.

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CIVIL CODE OF QUÉBEC

S.Q., 1991, c. 64.

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BOOK NINE

PUBLICATION OF RIGHTS

TITLE ONE

NATURE AND SCOPE OF PUBLICATION

CHAPTER I

GENERAL PROVISIONS

2934. The publication of rights is effected by their registration in the register of personal and movable real rights or in the land register, unless some other mode is expressly permitted by law.

Registration benefits the persons whose rights are thereby published.

1991, c. 64, s. 2934.

2934.1. The registration of rights in the land register is effected by indicating summarily the nature of the document presented to the registrar and making a reference to the application pursuant to which registration is effected.

The registration is valid only for the rights requiring or admissible for publication that are mentioned in the application, or where the application is in the form of a summary, in the accompanying document.

2000, c. 42, s. 11.

2935. Any person, even a minor or a protected person, may request the publication of a

right, on his own behalf or on behalf of another.

1991, c. 64, s. 2935.

2936. Any renunciation or restriction of the right to publish a right which shall or may be published, as well as any penal clause relating thereto, is without effect.

1991, c. 64, s. 2936.

2937. Publication of a right may be renewed at the request of any interested person.

1991, c. 64, s. 2937.

CHAPTER II

RIGHTS REQUIRING OR ADMISSIBLE FOR PUBLICATION

2000, c. 42, s. 12.

2938. The acquisition, creation, recognition, modification, transmission or extinction of an immovable real right requires publication.

Renunciation of a succession, legacy, community of property, partition of the value of acquets or of the family patrimony, and the judgment annulling renunciation, also require publication.

Other personal rights and movable real rights require publication to the extent prescribed or expressly authorized by law. Modification or extinction of a published right shall also be published.

1991, c. 64, s. 2938.

2939. Restrictions on the right to alienate, other than purely personal restrictions, and clauses of resolution, resiliation or eventual extinction of any right which shall or may be published, and any transfer or transmission of such rights, themselves shall or may be published.

1991, c. 64, s. 2939; 1992, c. 57, s. 716.

2940. Transfers of authority over immovables between the governments of Québec and Canada may be published.

Transfers of authority between the government of Québec or Canada and legal persons established in the public interest may also be published.

Registration of a transfer is obtained by filing a notice describing the immovable to be transferred and specifying the extent of the authority transferred, the term of the transfer and under which Act it is made.

1991, c. 64, s. 2940.

TITLE TWO

EFFECTS OF PUBLICATION

CHAPTER I

SETTING UP OF RIGHTS

2941. Publication of rights allows them to be set up against third persons, establishes their rank and, where the law so provides, gives them effect.

Rights produce their effects between the parties even before publication, unless the law expressly provides otherwise.

1991, c. 64, s. 2941.

2942. The publication of a right is renewed by notice, in the manner prescribed in the regulations under this Book; such renewal preserves the opposability of the right at its original rank.

1991, c. 64, s. 2942.

2943. A right that is registered in a register in respect of property is presumed known to any person acquiring or publishing a right in the same property.

A person who does not consult the appropriate register or, in the case of a right registered in the land register, the application to which the registration refers, and the accompanying document if the application is in the form of a summary, may not invoke good faith to rebut the presumption.

1991, c. 64, s. 2943; 2000, c. 42, s. 13.

2943.1. The registration in the land register of a real right established by agreement or of an agreement concerning a real right takes effect only from the registration of the title of the grantor or last holder of the right.

This rule does not apply where the right of the grantor or last holder was acquired without a title, in particular by natural accession, or where the title concerned is an original title of the State.

2000, c. 42, s. 14.

2944. Registration of a right in the register of personal and movable real rights or the land register carries, in respect of all persons, simple presumption of the existence of that right.

1991, c. 64, s. 2944; 2000, c. 42, s. 15.

CHAPTER II

RANKING OF RIGHTS

2945. Unless otherwise provided by law, rights rank according to the date, hour and minute entered on the memorial of presentation or, in the case of an application for registration in the land register, in the book of presentation, provided that the entries have been made in the proper registers.

Where publication by delivery is authorized by law, rights rank according to the time at which the property or title is delivered to the creditor.

1991, c. 64, s. 2945; 2000, c. 42, s. 16.

2946. Where two acquirers of an immovable hold their title from the same predecessor in title, the right is acquired by the acquirer who first publishes his right.

1991, c. 64, s. 2946.

2947. Where several registrations concerning the same property and rights of the same nature are requested at the same time, the rights rank concurrently.

1991, c. 64, s. 2947.

2948. An immovable hypothec ranks only from registration of the grantor's title, but after the vendor's hypothec created in the grantor's act of acquisition.

If several hypothecs have been registered before the grantor's title, they rank in the order of their respective registrations.

1991, c. 64, s. 2948.

2949. A hypothec affecting a universality of immovables ranks, in respect of each immovable, only from the time of registration of the hypothec against each.

Registration of a hypothec against immovables acquired subsequently is obtained by presenting a notice containing the description of the immovable acquired and a reference to the act creating the hypothec, and setting forth the specific amount for which the hypothec was granted.

However, if the hypothec was not published in the land book for the registration division in which the immovable acquired subsequently is located, its registration is obtained by means of a summary of the act creating the hypothec, containing a description of the acquired immovable.

1991, c. 64, s. 2949; 2000, c. 42, s. 17.

2950. A hypothec affecting a universality of movables ranks, in respect of each movable included in the universality, only from registration thereof in the register, under the description of the grantor and under the indication of the nature of the universality.

1991, c. 64, s. 2950.

2951. A hypothec on a movable subsequently incorporated into an immovable, having become an immovable hypothec, may not be set up against third persons before its registration in the land register.

The first hypothec registered in the land register has priority of rank, whether it be the hypothec on the movable subsequently incorporated into the immovable, or the immovable hypothec on the same immovable.

Registration in the land register of the hypothec on the movable is obtained by presenting a notice containing the description of the immovable concerned, a reference to the act creating the hypothec and its registration in the register of personal and movable real rights, and an indication of the particular sum for which the hypothec was granted.

1991, c. 64, s. 2951.

2952. Legal hypothecs in favour of persons having taken part in the construction or renovation of an immovable are ranked before any other published hypothec, for the increase in value added to the immovable; such hypothecs rank concurrently among themselves, in proportion to the value of each claim.

1991, c. 64, s. 2952.

2953. Hypothecs on movables that have been transformed, mixed or combined so as to form a new movable take the rank of the first hypothec published against any property having served to form the new movable, provided that the registration of the hypothec on the movable that was transformed, mixed or combined has been renewed against the new movable; if that is the case, the hypothecs rank concurrently, in proportion to the value of each movable thus transformed, mixed or combined.

1991, c. 64, s. 2953; 2002, c. 19, s. 15.

2954. A movable hypothec acquired on the movable of another or on a future movable ranks from the time of its registration but after the vendor's hypothec, if any, created in the grantor's act of acquisition, provided it is published within fifteen days after the sale.

1991, c. 64, s. 2954.

2955. Registration of the notice of crystallization determines the rank of a floating hypothec.

If several floating hypothecs are the subject of notices of crystallization, they rank among themselves from their respective registrations, regardless of the registration of the notices of crystallization.

1991, c. 64, s. 2955.

2956. Cession of rank between hypothecary creditors shall be published.

Where it occurs, the rank of the creditors is inverted, to the extent of their respective claims, but in such a manner as not to prejudice any intermediate creditors.

1991, c. 64, s. 2956.

CHAPTER III

OTHER EFFECTS

2957. Publication does not interrupt prescription.

1991, c. 64, s. 2957; 2000, c. 42, s. 18.

2958. Rights published after the registration of the minutes of the creditor's seizure of an immovable may not be set up against that creditor, provided the seizure is followed by a judicial sale.

1991, c. 64, s. 2958.

2959. Registration of a hypothec preserves, in favour of the creditor, the same rank for the interest due for the current year and the three preceding years as for the capital.

Similarly, the registration of an annuity preserves, in favour of the annuitant, the same rank for the periodic payments for the current year and the arrears for the three preceding years as for the prestation.

1991, c. 64, s. 2959.

2960. The creditor or annuitant has a hypothec for the surplus of interest due or arrears of annuity only from the time of registration of a notice setting forth the amount claimed.

However, interest due or arrears owing at the time of registration of the hypothec or annuity are preserved by the registration if the amount is stated in the application.

1991, c. 64, s. 2960.

2961. Substitution has no effect in respect of property acquired in replacement of substituted property unless the substitution is mentioned in the act of acquisition and is published.

Publication of the substitution does not affect the rights of third persons who have already published the rights they derive from the institute under an act by onerous title.

1991, c. 64, s. 2961.

2961.1. The registration of reservations of ownership or rights of redemption, or of any

transfer thereof, in respect of a universality of movable property of the same kind that may be involved in sales or transfers in the ordinary course of business between persons operating enterprises preserves all the rights of the seller or transferee not only in that property but also in any property of the same kind involved in reservations of ownership, rights of redemption or transfers between those persons subsequent to the registration. However, such reservations, rights or transfers do not have effect against a third person who acquires any such property in the ordinary course of business of the seller's enterprise.

Registration preserves the rights for a period of ten years; the period may be extended if the registration is renewed.

These rules also apply to the registration of rights of ownership under leasing contracts and of rights under leases with a term of more than one year, or of any transfer thereof, in respect of a universality of movable property of the same kind that may be involved in such contracts in the ordinary course of business between persons operating enterprises.

1998, c. 5, s. 13.

CHAPTER IV

PROTECTION OF THIRD PERSONS IN GOOD FAITH

2962. *(Repealed).*

1991, c. 64, s. 2962; 2000, c. 42, s. 19.

2963. Notice given or knowledge acquired of a right that has not been published never compensates for absence of publication.

1991, c. 64, s. 2963.

2964. Absence of publication may be set up by any interested person against any person, even a minor or a protected person, and against the State.

1991, c. 64, s. 2964.

2965. Every interested person may apply to the court, in cases of error, to obtain the correction or cancellation of a registered entry.

1991, c. 64, s. 2965.

CHAPTER V

ADVANCE REGISTRATION

2966. Any judicial demand concerning a real right which shall or may be published in the land register may, by means of a notice, be the subject of an advance registration.

A judicial demand concerning a movable real right entered in the register of personal and

movable real rights may also, by means of a notice, be the subject of an advance registration.

1991, c. 64, s. 2966.

2967. Where a person is, through no fault of his own, prevented from publishing a right arising from a will by reason of the concealment, destruction or contestation of the will or of any other obstacle, he may, to preserve that right, make an advance registration of the right he claims by presenting a notice within one year after the testator's death.

1991, c. 64, s. 2967.

2968. Rights which are the object of a judgment or transaction terminating an action are deemed published from the time of their advance registration, provided they are published within thirty days after the judgment acquires the authority of a final judgment (*res judicata*) or the transaction takes place.

Rights under a will that was prevented from being published are also deemed published from the time of their advance registration, provided the will is published within thirty days after the obstacle is removed or after the will is obtained or probated and within three years from the opening of the succession.

1991, c. 64, s. 2968.

TITLE THREE

FORMALITIES OF PUBLICATION

CHAPTER I

REGISTERS OF RIGHTS

SECTION I

GENERAL PROVISIONS

2969. A land register and a register of mentions are kept in the Land Registry Office, together with any other register the keeping of which is prescribed by law or by the regulations under this Book.

In addition, a register of personal and movable real rights is kept in the Personal and Movable Real Rights Registry Office.

The Land Registrar and the Personal and Movable Real Rights Registrar are charged, respectively, with keeping such registers.

1991, c. 64, s. 2969; 1998, c. 5, s. 14; 2000, c. 42, s. 20.

2970. Publication of rights concerning an immovable is made in the land register, in the land book for the registration division in which the immovable is situated.

Rights concerning a movable and any other rights are published by registration in the register of personal and movable real rights; if the movable real right also pertains to an immovable, registration shall also be made in the land register in accordance with the standards applicable to that register and determined by this Book or by the regulations under this Book.

1991, c. 64, s. 2970; 2000, c. 42, s. 21.

2971. The registers and other documents kept for publication purposes in registry offices are public documents; the consultation procedure is prescribed by the regulations under this Book.

1991, c. 64, s. 2971; 2000, c. 42, s. 22.

2971.1. No one may use the information contained in the registers and other documents kept in registry offices in such a manner as to damage the reputation or invade the privacy of a person identified in such a register or document.

1998, c. 5, s. 15; 2000, c. 42, s. 23.

SECTION II

LAND REGISTER

2972. The land register contains one land book for each registration division in Québec.

Each land book contains an index of immovables, a register of real rights of State resource development, a register of public service networks and immovables situated in territory without a cadastral survey and an index of names. The index of names comprises all the entries that cannot be made in the index of immovables or the other registers kept by the Land Registrar.

1991, c. 64, s. 2972; 2000, c. 42, s. 24.

2972.1. The index of immovables contains one land file for each immatriculated immovable on the cadastral plan for the registration division.

2000, c. 42, s. 24.

2972.2. The register of real rights of State resource development contains one land file, identified by a serial number, for each such real right in the registration division the *situs* of which is not immatriculated.

The register of public service networks and immovables situated in territory without a cadastral survey contains one land file, identified by a serial number, for each such non-immatriculated network or immovable in the registration division, even if two or more networks or immovables belong to the same owner.

A directory of real right holders completes the two registers.

2000, c. 42, s. 24.

2972.3. Land files relating to immovables, rights or networks situated in territory without a cadastral survey and, where permitted by law, in territory with a cadastral survey, are opened in the manner prescribed in the regulations.

2000, c. 42, s. 24.

2972.4. Each land file contained in the index of immovables, the register of real rights of State resource development or the register of public service networks and immovables situated in territory without a cadastral survey lists the entries made concerning the immovable, the real rights or the network concerned.

2000, c. 42, s. 24.

2973. *(Repealed).*

1991, c. 64, s. 2973; 2000, c. 42, s. 25.

2974. *(Repealed).*

1991, c. 64, s. 2974; 2000, c. 42, s. 25.

2975. *(Repealed).*

1991, c. 64, s. 2975; 2000, c. 42, s. 25.

2976. *(Repealed).*

1991, c. 64, s. 2976; 2000, c. 42, s. 25.

2977. *(Repealed).*

1991, c. 64, s. 2977; 2000, c. 42, s. 25.

2978. The owner of several immovables not immatriculated but contiguous, charged with the same real rights and situated in the same registration division, may require the registrar to consolidate the files opened for each immovable into a single file.

The same applies to the holder of a real right of State resource development of which the *situs* is not immatriculated, provided the real rights of development are of the same nature, of the same duration, contiguous and charged with the same real rights.

The owner or holder presents an application containing the description of the immovable resulting from the consolidation and identifying the related land files and any subsisting entries to be carried over to the new land file. The registrar indicates the correspondence

between the old and the new land files and carries over the entries.

1991, c. 64, s. 2978.

2979. Upon any partition of an immovable which has not been immatriculated, new land files are opened.

In the document evidencing the partition shall be included a declaration containing a description of the immovables concerned and identifying the original land file and any subsisting entries to be carried over to the new land files.

The registrar establishes the correspondence between the old and the new land files and carries over the entries.

1991, c. 64, s. 2979.

SECTION III

REGISTER OF MENTIONS

2000, c. 42, s. 26.

2979.1. The register of mentions contains, in the cases prescribed by law, the mentions and entries required by law or by the regulations under this Book in connection with entries made in the land register or the other registers kept by the Land Registrar.

2000, c. 42, s. 26.

SECTION IV

REGISTER OF PERSONAL AND MOVABLE REAL RIGHTS

2000, c. 42, s. 26.

2980. The register of personal and movable real rights consists, with respect to personal rights, of files kept in alphabetical, alphanumerical or numerical order, under the description of the persons named in the application for registration and, with respect to movable real rights, of files kept by categories of property or of universalities, under the designation of the movables charged or the indication of the nature of the universality, or of files under the name of the grantor.

Rights under a lease on movable property are registered in files kept solely under the description of the lessee named in the application whenever a file is otherwise kept under the identification number of the leased property.

The registrations pertaining to the person or the movable property are listed in each file.

1991, c. 64, s. 2980; 2000, c. 42, s. 27.

CHAPTER II

APPLICATIONS FOR REGISTRATION

SECTION I

GENERAL RULES

2981. Applications for registration in the land register, in addition to identifying the holders and grantors of the rights to be registered, contain, in particular, the description of the property concerned and the mentions prescribed by law or by the regulations under this Book.

Applications for registration in the register of personal and movable real rights identify the holders and grantors of the rights, state the nature of the rights, describe the property concerned and mention any other fact that is relevant for registration purposes, as prescribed by law or by the regulations under this Book.

1991, c. 64, s. 2981; 2000, c. 42, s. 28.

2981.1. Unless a land file identified by a serial number has been opened for the immovable concerned, an application for registration in the land register must include the name of the registration division in which the immovable is situated.

2000, c. 42, s. 29.

2981.2. An application for registration in the land register of a hypothec, a restriction on the right to dispose of property or a right of fixed duration may fix the date after which the registration ceases to have effect.

An application for registration in the register of personal and movable real rights of a hypothec or of such a restriction or right must fix the date after which the registration ceases to have effect.

2000, c. 42, s. 29.

2982. An application for registration in the land register is presented at the Land Registry Office or, if the application is presented in paper form, at the registry office established for the registration division in which the immovable is situated.

The application is made by presenting the act itself or an authentic extract of the act, by presenting a summary of the act or, where the law so provides, by means of a notice.

1991, c. 64, s. 2982; 2000, c. 42, s. 30.

2983. A single copy of an application for registration in the register of personal and movable real rights is filed in the Personal and Movable Real Rights Registry Office; application is made by the presentation of a notice, unless otherwise provided by law or the regulations.

1991, c. 64, s. 2983; 2000, c. 42, s. 31.

2984. Applications for registration are signed, certified and presented in the manner prescribed by law, this Title or the regulations.

1991, c. 64, s. 2984.

2985. Every person requiring registration in the land register is bound to present, in addition to the summary, the act itself, the extract or any document summarized in the extract or summary, for conservation and consultation.

1991, c. 64, s. 2985; 1992, c. 57, s. 716.

2986. Whatever the form of the application for registration in the register of personal and movable real rights, only those rights which are set out in the application and which shall be entered in the register are published therein.

Nevertheless, where authorized by regulation, reference in the registration to the document under which registration is required is permitted to identify the *situs* of the right or the extent of the right.

1991, c. 64, s. 2986; 2000, c. 42, s. 32.

2987. Where an application for registration is made by the presentation of a summary, that summary may not be used to summarize non-complementary or unrelated documents.

However, one summary is sufficient where the right intended to be published is evidenced in several documents.

1991, c. 64, s. 2987.

SECTION II

CERTIFICATES

2988. A notary who executes an act requiring the registration of a right in or the removal of a right from the land register, or the reduction of an entry, certifies, merely by signing the document, that he has verified the identity, quality and capacity of the parties, and that the document represents the will expressed by the parties.

1991, c. 64, s. 2988; 2000, c. 42, s. 33.

2989. A land surveyor who draws up the minutes following a voluntary determination of boundaries, even one done informally, certifies, merely by signing the document, that he has verified the identity, quality and capacity of the parties and that the document represents the will expressed by the parties.

1991, c. 64, s. 2989; 2000, c. 42, s. 34.

2990. Officers of justice, municipal clerks or secretaries and other drafters of public authentic acts other than adjudicative acts must certify that they have verified the identity of the parties to the acts drawn up by them which require publication by registration in the land register.

1991, c. 64, s. 2990; 2000, c. 42, s. 35.

2991. An act in private writing requiring the registration of a right in or the removal of a right from the land register, or the reduction of an entry, must indicate the date and place it is drawn up and be accompanied with a certificate of a notary or advocate attesting that he has verified the identity, quality and capacity of the parties and the validity of the act as to form, and that the document represents the will expressed by the parties.

1991, c. 64, s. 2991; 2000, c. 42, s. 36.

2992. Where registration in the land register is required by means of a summary, the certificate of the notary or advocate who draws up the document also attests that the summary is accurate.

1991, c. 64, s. 2992.

2993. Unless implicit in the signature of the notary or land surveyor, the certification is recorded in a declaration which must contain, in addition to the date on which it is made, the name and quality of the declarer and the place where the declarer exercises his functions or practises his profession.

1991, c. 64, s. 2993; 1995, c. 33, s. 30; 2000, c. 42, s. 37.

2994. Where an act requiring or admissible for publication by registration in the land register cannot be certified as required, the court may authorize publication of the rights evidenced in the act despite the lack of certification.

The application for registration must be accompanied with a copy of the judgment; the application is not admissible unless the judgment has acquired the authority of *res judicata*.

1991, c. 64, s. 2994; 2000, c. 42, s. 38.

2995. No certificate of verification is required for the registration in the register of personal and movable real rights.

Documents presented for registration in the land register of declarations of family residence, immovable leases or notices prescribed by law, other than notices required for the registration of a legal or movable hypothec or the cadastral notice for the registration of a right, need not be certified by a notary or advocate, but by two witnesses, including one under oath.

1991, c. 64, s. 2995.

SECTION III

SPECIAL REGISTRATION RULES

2996. The minutes of boundary determination are presented with the related plan and, where applicable, with the application for registration of the judgment of homologation. An express statement that the boundary between the properties coincides with the boundaries between the corresponding lots on the cadastre shall be included in the minutes.

If the minutes do not state that the boundaries coincide, registration of the minutes in the land register shall be refused until an amendment to the plan is indicated in the land register and notice of the amendment relating to the lots concerned is registered in that register.

1991, c. 64, s. 2996; 2000, c. 42, s. 39.

2997. Where the deposit of a plan in the registry office is required by an Act, publication of the plan is obtained by presenting the plan and a notice describing the immovable represented on the plan.

This provision does not apply to cadastral plans.

1991, c. 64, s. 2997; 2000, c. 42, s. 40.

2998. The rights of an heir or of a legatee by particular title in an immovable of the succession are published by registration of a declaration made by notarial act *en minute*.

However, where movable property is concerned, the right of an heir or of a legatee by particular title may be registered only if it relates to the transmission of a hypothecary claim or of a restriction on the right to alienate, or to an advance registration. The declaration takes the form of a notice in which, where applicable, reference is made to the will.

1991, c. 64, s. 2998.

2999. The declaration sets forth the name and last domiciliary address, the date and place of birth and of death, the nationality and civil status, and the matrimonial or civil union regime, if any, of the deceased.

It also sets forth whether the succession is legal or testamentary, the quality of the declarant as heir, legatee by particular title or married or civil union spouse, the degree of relationship between each of the heirs and the deceased, any renunciations, the description of the property and of the persons concerned, and the right of each in the property.

1991, c. 64, s. 2999; 2002, c. 6, s. 60.

2999.1. Registration of rights under a lease on an immovable other than a dwelling or of the assignment of such a lease may be obtained, in addition to the other modes provided for in this Book, by presenting a notice to the land registrar.

The notice must refer to the lease concerned, identify the lessor and the lessee and contain the description of the immovable in which the leased premises are situated. It must also, unless the registration concerns the assignment of the lease or the extinction of rights under the lease, indicate, in particular, the effective date of the lease and the date of expiry, if any, or the particulars needed to determine such dates, as well as any rights existing in respect of the renewal of the lease.

The accuracy of the content of the notice must in all cases be verified by a notary or an advocate.

1999, c. 49, s. 2; 2000, c. 42, s. 41.

3000. Notices of forced sales and other notices prescribed in the Book on Prior Claims and Hypothecs shall be published.

Where an immovable is sold by way of a forced sale or a sale following the exercise of a hypothecary right, no copy of the act evidencing the sale may be issued before the sale is published, at the purchaser's expense, by the person entrusted with the sale.

1991, c. 64, s. 3000; 1998, c. 5, s. 16.

3001. The person entrusted with an auction sale for non-payment of immovable taxes is bound to present, within ten days after adjudication, a list identifying each immovable sold, its purchaser and last owner and indicating the mode of acquisition and the registration number of the title of the last owner.

The sale is registered with the mention that it was an adjudication for non-payment of immovable taxes.

1991, c. 64, s. 3001.

3002. An application based on a judgment ordering the correction of an entry in the land register or pronouncing the recognition of a right of ownership in an immovable may be made only if the judgment has acquired the authority of a final judgment (*res judicata*).

1991, c. 64, s. 3002.

3003. Where a hypothec is transferred by subrogation or assignment, the subrogation or assignment is published in the land register or in the register of personal and movable real rights, according to the immovable or movable nature of the hypothec.

A certified statement of registration must be furnished to the debtor, together with the application for registration in the case of registration in the land register and, if such application is in the form of a summary, the accompanying document.

If these formalities are not observed, the subrogation or assignment may not be set up against a subsequent assignee who has observed them.

1991, c. 64, s. 3003; 2000, c. 42, s. 42.

3004. Where subrogation to a hypothecary claim is acquired by operation of law, publication of the subrogation is effected by registering the act from which it derives; if there is no act, publication of the subrogation is effected by presenting a notice stating the causes of the subrogation.

1991, c. 64, s. 3004.

3005. A summary certified by a notary may set forth the lot number assigned to the immovable in which the right is held in the cadastre or the original survey, or the serial land file number assigned to the immovable with, if applicable, its description by metes and bounds, or may state the geographic coordinates or the plane rectangular coordinates by which the immovable may be described, even if such information does not appear in the document summarized.

A summary certified by an advocate or a notary may include, even if the act contains no mention thereof, the name of the municipality or registration division in which the immovable is situated, and the date and place of birth of the persons named in the act, as well as the declarations required by law for certain transfers of immovables.

1991, c. 64, s. 3005; 2000, c. 42, s. 43; 2002, c. 19, s. 13.

3006. Where the law prescribes that the application shall, upon presentation, be accompanied with other documents, any such documents drawn up in a language other than French or English shall themselves be accompanied with a translation authenticated in Québec.

1991, c. 64, s. 3006.

CHAPTER III

DUTIES AND FUNCTIONS OF THE REGISTRAR

3006.1. For purposes of land registration, the registrar receives applications and enters the exact date, hour and minute of their presentation in the book of presentation, together with the particulars required to identify each application. Where an application is presented in paper form, the registrar converts the application and the accompanying documents to electronic form and forwards them in electronic form to the Land Registry Office, and returns the originals to the applicant.

Subsequently, in the order of presentation of the applications and with all possible diligence, the registrar makes the entries, mentions and references prescribed by law or by the regulations under this Book, in the appropriate register. The entries, mentions and references required by applications for the registration of rights are made day by day, giving priority in all cases to those entries, mentions and references over any that are required by applications to strike or reduce an earlier entry.

2000, c. 42, s. 44.

3007. The Personal and Movable Real Rights Registrar receives the applications and issues to the person presenting them a memorandum on which he indicates the exact date, hour and minute of presentation, as well as the particulars necessary for identifying the application.

Subsequently, day by day, in the order of presentation of applications, and with all possible diligence, he makes the entries prescribed by law or by the regulations under this Book in the register.

1991, c. 64, s. 3007; 2000, c. 42, s. 45.

3008. The registrar ascertains that the application presented in support of an entry in a register contains the prescribed particulars and meets the requirements prescribed by law and the regulations under this Book and, where applicable, that the required documents are also presented.

1991, c. 64, s. 3008.

3009. Where the application for registration in the land register has been attested by an advocate or a notary, the identity and capacity of the parties are held to have been verified and the summary of the document is held to be accurate. The same rule applies to the identity and capacity of the parties to minutes of boundary determination attested by a land surveyor.

The identity of the persons is also held to have been verified where it is attested by one of the persons mentioned in article 2990.

The identity of parties to any other application for registration in the land register or in the register of personal and movable real rights is presumed to be accurate and their capacity is held to have been verified.

1991, c. 64, s. 3009.

3010. Where the application presented is not admissible or contains inaccuracies or irregularities, the registrar makes no entry in the registers, but informs the applicant of the reasons for refusing registration.

1991, c. 64, s. 3010.

3011. The registrar remits to the applicant a certified statement of the entry he has made in the register, on the basis of the application presented. As regards land registration, a duplicate of the certified statement is appended to the application kept in the Land Registry Office.

1991, c. 64, s. 3011; 2000, c. 42, s. 46.

3012. Applications are deemed presented from the time they are received by the registrar of the registry office where they are to be presented.

If several applications are delivered to the registry office by the same mail delivery or are presented by the same bearer, they are deemed presented simultaneously. Applications forwarded in bulk by a technological means determined by regulation are considered to be presented simultaneously; however, they all bear the date, hour and minute of reception of the last application forwarded in that way.

Applications delivered to the registry office of the registration division in which the immovable concerned is situated, or to the Personal and Movable Real Rights Registry Office, outside the hours for the presentation of documents or when the office is closed, are deemed presented at the time activities resume in the office ; applications delivered to the Land Registry Office outside the hours for the presentation of documents at the registry office of the registration division in which the immovable concerned is situated, or when the latter registry office is closed, are deemed presented at the time activities resume in the latter registry office.

1991, c. 64, s. 3012; 2000, c. 42, s. 47.

3013. *(Repealed).*

1991, c. 64, s. 3013; 2000, c. 42, s. 48.

3014. Before registering a subrogation, the assignment of a claim, prior notice of the exercise of a hypothecary right or the renewal of the registration of a right in the proper register, the registrar shall verify the registration number, if any, of the title of indebtedness. If the number is inaccurate, he refuses registration.

Where the registration is made in the land register, a mention of the subrogation, assignment or renewal, together with its registration number, is entered in the register of mentions.

1991, c. 64, s. 3014; 2000, c. 42, s. 49.

3014.1. Upon registration in the land register of a hypothec on a claim secured by an immovable hypothec, a mention of the hypothec, together with its registration number, is entered in the register of mentions.

2000, c. 42, s. 50.

3015. The registrar, upon receiving notice of a change of name of the holder or grantor of a published right, containing a reference to the registration number of that right and accompanied with a certified copy of the document evidencing the change, shall enter the change in the proper register, establish the correspondence between the former name and the new name and indicate the registration number of the right concerned.

To obtain registration of a change of name in the land register, the description of the immovable concerned shall also be included in the notice.

1991, c. 64, s. 3015.

3016. Where the registrar notes a clerical error in a register, a certified statement or a mention in the margin of a document, or the omission of an entry or of a mention in a register or in the margin of a document, he corrects the error or makes the entry or mention in the manner prescribed by regulation.

Any interested person may, upon noting such an error or omission, request the registrar to make the appropriate correction, entry or mention ; if an applicant notes such an error or omission, he is bound to make such a request.

In all cases, the registrar indicates the date, hour and minute the correction, entry or mention is made.

1991, c. 64, s. 3016; 2000, c. 42, s. 51.

3017. The registrar is bound to notify, as soon as possible, each person having required registration of his address, that the property in which he holds a published right is the subject of a notice of intention to exercise a hypothecary right or a prior notice of sale for non-payment of immovable taxes. He does the same where a notice requires the abandonment of a taking in payment or where the property is to be sold by judicial authority or, in the case of an immovable, has been adjudicated for non-payment of immovable taxes, or is under seizure; the registrar indicates the place and date of any sale.

Similar notification shall be sent to the Attorney General in the case of any property charged with a hypothec or in the case of a published prior claim in favour of the State.

A person having required the registration of an electronic address is deemed to have been notified upon simple proof that the information the registrar is required to notify has been transmitted to that address.

1991, c. 64, s. 3017; 2000, c. 42, s. 52.

3018. The registrar may not, except for purposes prescribed by regulation, use the registers, or the other documents he keeps, for purposes other than ensuring, in accordance with the law, the publication of the rights registered or mentioned therein, particularly so as to render them effective against third persons, establish their rank and give them effect.

Nor may the registrar use the registers or documents to furnish to any person a list of owners, hypothecary creditors or other holders of rights, a list of debtors or grantors of rights or a list of the properties owned by a person. Furthermore, no search by reference to a person's name is permitted in the registers and documents kept by a land registrar, unless it concerns a notice of address, is carried out in the index of names or concerns an immovable, a real right of State resource development or public service network which is not immatriculated.

1991, c. 64, s. 3018; 1998, c. 5, s. 17; 2000, c. 42, s. 53.

3019. The registrar is bound to issue to any person who applies therefor a certified statement of the real rights, or of the hypothecs or charges, subsisting against a determined

immovable or its owner or, where the application concerns the register of personal and movable real rights, a certified statement of the rights entered in that register ; the statement indicates the date, hour and minute of updating of the register and if it is issued by a land registrar, it refers to the application.

The registrar is also bound to issue, to any person requesting it, a copy of documents kept in the registry offices or a certified statement of a particular entry.

1991, c. 64, s. 3019; 2000, c. 42, s. 54.

3020. The registrar is not liable for any prejudice which may result from information furnished by him as a result of an error not due to his act or omission in the identification of a person or the description of a property.

1991, c. 64, s. 3020.

3021. Registrars are bound

- (1) to keep, in their original form or in any other form, in the registry offices, the documents transmitted to them for publication purposes;
- (2) to make entries in the registers so as to ensure the integrity of the information;
- (3) to protect the entries in the registers against any alteration;
- (4) to establish and keep in a safe place other than the registry offices, a copy of the registers and other documents kept on a computer system;
- (5) for archival purposes, to maintain a record of entries in the register of personal and movable real rights which are no longer effective;
- (6) for archival purposes, to keep, in the registry offices or in any other place, the registers and documents in paper form which were converted to electronic form pursuant to a ministerial order under the Act respecting registry offices.

Registrars may not surrender the registers and documents or be required to produce a copy of them outside the registry office except in judicial proceedings in improbation or in contestation of the authenticity of a document.

In addition, they may not correct or amend the cadastral plans; if there are omissions or errors in the description, dimensions or number of any lot, or in the name of the owner, the mode of acquisition or the registration number of the title, they shall report the error or omission to the Minister responsible for the cadastre who may, where necessary, correct the original and the copy and certify the correction.

1991, c. 64, s. 3021; 2000, c. 42, s. 55.

CHAPTER IV

REGISTRATION OF ADDRESSES

3022. The prior or hypothecary creditors or their successors, holders of real rights, married or civil union spouses having published a declaration of family residence or beneficiaries under such a declaration, or any other interested persons, may require their addresses to be registered, in the manner prescribed by regulation, in order to receive notification from the registrar of certain events affecting their rights. They may not require that their address be registered in connection with a right published in the index of names of the land register.

Registration of an address in the land register is valid for a period of thirty years; it may be renewed. Registration of an address in the register of personal and movable real rights is valid for as long as the publication of the right to which it relates subsists.

Applications for the registration of an address require no certification.

1991, c. 64, s. 3022; 2000, c. 42, s. 56; 2002, c. 6, s. 61.

3023. The person for whose benefit an address is registered may, by means of a notice, require the registrar to effect a change in the address or in the person's name, or in the reference to the registration number of the address.

The person may also, by means of a notice, require the registrar to enter in the register an omitted reference to the registration number of the address.

1991, c. 64, s. 3023; 2000, c. 42, s. 57.

3023.1. To describe an immovable in an application presented pursuant to the provisions of this chapter, it is sufficient to indicate the lot number assigned to the immovable in the cadastre or the serial number of the land file concerning the immovable.

However, the immovable need not be described in a notice to change the address or name of a person that is registered in the register.

2000, c. 42, s. 58.

CHAPTER V

REGULATIONS

3024. The Government may, by regulation, take all the necessary steps for the implementation of the provisions of this Book; it may, in particular, establish the standards of presentation of applications for registration and determine the form and content thereof; it may also determine the form and content of documents, notices, certificates and declarations which are not specified by law.

The Government may also determine the standards and criteria which allow the particulars identifying a movable to be specified, the categories and abbreviations which may be used in the description of a movable and the manner of opening, keeping and closing files.

The Government may also determine the form, medium and content of any register or file kept by a registrar, the system for keeping applications, the method of numbering the land files of immovables, the manner of making various entries in the registers. It also fixes the business days and business hours of the registry offices, the procedure for examining registers and the rules governing the issuance of statements or certificates.

1991, c. 64, s. 3024; 1992, c. 57, s. 716.

3025. Where required by the circumstances, the minister in charge of the organization and inspection of a registry office may, by order, change the business hours of the registry office or close the registry office temporarily.

1991, c. 64, s. 3025; 2000, c. 42, s. 59.

TITLE FOUR

IMMATRICULATION OF IMMOVABLES

CHAPTER I

CADASTRAL PLAN

3026. The immatriculation of an immovable consists in establishing its relative position on a cadastral plan, indicating its boundaries, measurements and area and assigning a number to it.

Immatriculation is completed by the identification of the owner, an indication of the mode of acquisition, the registration number of the title and, where applicable, the correspondence between the old and new cadastral numbers, or between the serial number of the file for the immovable and the new cadastral number.

1991, c. 64, s. 3026; 2000, c. 42, s. 60.

3027. The cadastral plan is drawn up according to law and forms part of the land register; it is presumed accurate.

In the case of discrepancy between the boundaries, measurements and area shown on the plan and those mentioned in the documents presented, those on the plan are presumed accurate.

The cadastral plan, if transmitted in paper form and not converted to electronic form, is kept in the registry office for the registration division in which the immovables represented on the plan are situated.

1991, c. 64, s. 3027; 2000, c. 42, s. 61.

3028. The cadastral plan comes into force on the day the land file is opened in the land register.

The opening of land files shall be made in the order of receipt of cadastral plans, with all possible diligence.

1991, c. 64, s. 3028; 2000, c. 42, s. 62.

3028.1. The publication of a hypothec on an immovable represented on a cadastral plan established pursuant to section 1 of the Cadastre Act must, except if the hypothec has been entered in a serially-numbered land file opened for that immovable, be renewed within two years following the opening of the land file in the index of immovables.

If the publication is not renewed, the rights recorded by the initial registration have no effect with respect to other creditors or subsequent purchasers whose rights are duly published.

2000, c. 42, s. 63.

3029. Every cadastral plan shall be submitted to the Minister responsible for the cadastre, who, if satisfied that the plan is made according to law and is accurate, transmits a copy certified by him for deposit in the registry office; he also sends a copy to the office of the municipality where the immovable is situated.

1991, c. 64, s. 3029; 2000, c. 42, s. 64.

3030. Except where it pertains to an immovable situated in territory without a cadastral survey, no right of ownership may be published in the land register unless the immovable concerned is identified by a separate lot number on the cadastre.

No declaration of co-ownership or of co-emphyteusis may be registered unless a cadastral plan of the immovable has been made, and contains the immatriculation of the private and common portions.

1991, c. 64, s. 3030.

3031. The *situs* of a real right of State resource development which the law declares to be property separate from the land on which it is exercisable, such as a mining right, or the *situs* of a railway network or a network of cable communications, water or gas distribution, power lines, oil or gas pipelines or sewage conduits may be immatriculated.

However, connections between a network and the immovables served by it are not shown on the cadastral plan.

1991, c. 64, s. 3031; 1995, c. 33, s. 31.

3032. From the day a cadastral plan comes into force, the number assigned to a lot is its sole description and is sufficient description in any document referring to it.

Where the right which is to be published pertains to an immovable composed of several whole lots, each lot shall be individually described.

1991, c. 64, s. 3032.

3033. From the day a cadastral plan comes into force, every person drafting an act which shall or may be published is bound to describe immovables by the number assigned to them on the cadastral plan.

Failing such description, the application for registration of a right shall be refused, unless a notice containing the description of the immovable is presented, with the act itself or an extract or summary thereof, in accordance with the rules established in this Book.

The cadastral notice for registration of the right shall be made in the manner prescribed in the regulations made under this Book.

1991, c. 64, s. 3033; 1992, c. 57, s. 716.

3034. When, on an application from the owner of an immovable situated in a territory without a cadastral survey or of a network or the holder of a real right of State resource development, a land file is opened under a serial number, that number is the sole description of the immovable to which the file applies, and is sufficient in any document making reference thereto.

After the file is opened, any person who drafts an act which shall or may be published is bound to describe the immovable to which the file applies by the number assigned to it, and to indicate that the immovable corresponds, wholly or in part, to the immovable for which the file was opened. If this indication does not appear in the application, the registration shall be refused.

1991, c. 64, s. 3034; 2000, c. 42, s. 65.

3035. In no case may the registrar accept an application in respect of an immovable situated in a territory which has no cadastral survey, or in respect of a network or a real right of State resource development, which does not contain the description of the land file concerned or is not accompanied with a notice making reference to the file, except where the application includes or is accompanied with an application for the opening of a file.

No application for the opening of a file is necessary, if the application in respect of the immovable, network or right does not pertain to any real right established by agreement or to any agreement relating to a real right; however, until a land file is opened, registration may only be effected in the index of names.

A land file identified by a serial number cannot be opened in respect of a real right of State resource development unless the right is declared by law to be property separate from the land in which it is held.

1991, c. 64, s. 3035; 2000, c. 42, s. 66.

3036. In territory without a cadastral survey and also in territory with a cadastral survey if permitted by law, an immovable shall be described by metes and bounds and by its measurements; an indication of the elements useful for locating the relative position of the immovable and a statement that no land file exists, shall also be included in the description.

The description of an immovable by reference to the original survey or by means of geographic coordinates or plane rectangular coordinates is nevertheless admissible in a territory without a cadastral survey, provided that the description, which must also state that no land file exists, allows the immovable to be properly identified and its relative position to be properly located. Where the description of an immovable by reference to the original survey refers to parts of lots, it must be completed by a description by metes and bounds and the measurements of each of those parts.

1991, c. 64, s. 3036; 2000, c. 42, s. 67; 2002, c. 19, s. 14.

3037. Where an immovable consists of parts of several lots, each part of a lot shall be described by metes and bounds and its measurements.

The description of a part of lot as the remainder after separation of other parts of the lot, or by reference to the names of the owners of its adjoining properties, is not admissible.

1991, c. 64, s. 3037.

3038. The description of a railway network, or a network of cable communications, water or gas distribution, power lines, oil or gas pipelines or sewage conduits includes, apart from an indication of its general nature,

- (1) if the network is immatriculated, the cadastral number assigned to it;
- (2) if the network is not immatriculated, the description of the cadastres traversed by it or, in territory without a cadastral survey, a description sufficient to identify it, unless a land file has been opened for the network.

In an application for the opening of a land file for a network which is not immatriculated, a description shall be given of the cadastres or territory served by it.

1991, c. 64, s. 3038; 1995, c. 33, s. 32.

3039. The *situs* of a real right of State resource development which has been immatriculated is described by the immatriculation number assigned to it. That number, with an indication of the nature of the right, is sufficient description in any document which refers to it.

The assignment of an immatriculation number includes the description of the immovables on which the real right of State resource development is exercised, in order that the relevant correspondences be entered in the land register.

1991, c. 64, s. 3039.

3040. The *situs* of a real right of State resource development which is not immatriculated is described by the mention of the nature of the right and a description of the place where it is exercised, unless a land file has been opened for the *situs* of the right in question.

The number of the land files of the immovables on which the right is exercised shall be included in the application for the opening of the land file of that right, so that the relevant correspondences may be entered in the land register, either in the index of immovables or in the register of public service networks and immovables situated in territory without a cadastral survey; the right is enforceable against third persons only from the time the relevant correspondences are entered in the register.

1991, c. 64, s. 3040; 2000, c. 42, s. 68.

3041. The immatriculation of the private and common portions of a vertical divided co-ownership may not take place before the foundation and main walls of the building in which they are situated allow measurement of their boundaries.

1991, c. 64, s. 3041.

3042. A person authorized to expropriate shall, in territory with a cadastral survey, submit to the minister responsible for the cadastre a plan, signed by that person on behalf of the owner, in order that the required part and the remainder be immatriculated; he shall, in addition, in the case of a plan involving a renumbering, give notice of the deposit to every person having caused his address to be registered, but the consent of the creditors and the beneficiary of a declaration of family residence is not required for the obtention of the new cadastral numbering.

No transfer under the Expropriation Act nor cession of the required part of the lot may be registered before the plan comes into force.

The first paragraph also applies to municipalities authorized by law to appropriate, without formality or indemnity, a right of superficies above, on or under an immovable, for public use.

1991, c. 64, s. 3042; 2000, c. 42, s. 69.

CHAPTER II

AMENDMENTS TO THE CADASTRE

3043. Any person may submit a plan, signed by him, to the minister responsible for the cadastre in order to amend, by subdivision or otherwise, the plan of a lot he owns or to amend, by parcelling, the plan of a lot the ownership of which he has acquired otherwise than by agreement; he may also request the numbering of a lot, the striking out or replacement of the existing numbering or obtain a new numbering.

The acceptance by the minister of a plan the purpose of which is to amend, by parcelling, the plan of a lot the ownership of which has been acquired by a person otherwise than by agreement compensates for the absence of the signature of any other person having rights in the lot represented on the plan.

The minister may also, in case of error, correct a plan or change the number of a lot, supply

any omitted number or strike out or replace the existing numbering. He shall in such a case notify the amendment to the owner registered in the land register and any person having caused his address to be registered. Such notification includes reasons and is accompanied with extracts from the old and the new cadastral plans.

Upon the dividing up of a lot, the parts resulting therefrom shall be immatriculated simultaneously.

1991, c. 64, s. 3043; 2000, c. 42, s. 70.

3044. The consent of the hypothecary creditors and of the beneficiary of a declaration of family residence is required for the proprietor to obtain a cadastral amendment involving a renumbering.

The consent is given by notarial act *en minute*, and shall be registered and transmitted, with a certified statement of registration, to the minister responsible for the cadastre.

1991, c. 64, s. 3044; 2000, c. 42, s. 71.

3045. The registrar indicates in the register, under the number of the lot concerned, the nature of any amendment made to the plan which does not affect the cadastral number.

When opening a land file required by a cadastral renumbering, the registrar establishes, where applicable, according to what is shown on the plan, the correspondence between the old lot number or the old serial number of the land file and the new lot number.

1991, c. 64, s. 3045; 2000, c. 42, s. 72.

CHAPTER III

Repealed, 2000, c. 42, s. 73

3046. *(Repealed).*

1991, c. 64, s. 3046; 2000, c. 42, s. 73.

3047. *(Repealed).*

1991, c. 64, s. 3047; 2000, c. 42, s. 73.

3048. *(Repealed).*

1991, c. 64, s. 3048; 2000, c. 42, s. 73.

3049. *(Repealed).*

1991, c. 64, s. 3049; 2000, c. 42, s. 73.

3050. *(Repealed).*

1991, c. 64, s. 3050; 2000, c. 42, s. 73.

3051. (*Repealed*).

1991, c. 64, s. 3051; 2000, c. 42, s. 73.

3052. (*Repealed*).

1991, c. 64, s. 3052; 2000, c. 42, s. 73.

3053. (*Repealed*).

1991, c. 64, s. 3053; 2000, c. 42, s. 73.

CHAPTER IV

PARTS OF LOTS

3054. Rights set forth in an application evidencing the acquisition of a part of a lot may not be registered in the land register until a cadastral amendment assigns

- (1) a separate cadastral number to the acquired part and to the remainder; or
- (2) a separate cadastral number, where the acquired part is amalgamated with a contiguous lot, to the immovable resulting from the amalgamation and to the immovable resulting from the partition.

1991, c. 64, s. 3054; 2000, c. 42, s. 74.

3055. On the recommendation of the minister responsible for the cadastre, the Government, by order and on the conditions it determines, and in a territory that has been the subject of a cadastral renovation, may allow registration in the land register of the alienation of part of a lot situated in an agricultural zone established under the Act respecting the preservation of agricultural land and agricultural activities, or situated over 345 kilometres from the registry office for the registration division in which the lot is situated.

The order is published in the *Gazette officielle du Québec*; it comes into force on such date after its publication as is fixed therein.

1991, c. 64, s. 3055; 1996, c. 26, s. 85; 2000, c. 42, s. 75.

3056. The registrar transmits to the minister responsible for the cadastre a copy of any document evidencing an alienation registered by him in the land register on the authority of the order.

On receipt of the document, the minister prepares the amendment providing a separate cadastral number for each part of a lot resulting from the alienation.

1991, c. 64, s. 3056.

TITLE FIVE

CANCELLATION

CHAPTER I

CAUSES OF CANCELLATION

3057. Cancellation arises from an entry to strike an earlier registration from a register.

To cancel a registration in the land register, the entry is made in the register of mentions.

1991, c. 64, s. 3057; 2000, c. 42, s. 76.

3057.1. Unless otherwise provided by law, cancellation is obtained by presenting an application made in accordance with the rules applicable to the land register or the register of personal and movable real rights. However, applications for cancellation of a registration in the land register may be presented in the form of a summary only in the cases determined by law.

Cancellation is voluntary or, failing that, judicial; it may also be legal.

2000, c. 42, s. 76.

3057.2. Cancellation arising from an entry in the register of mentions must be noted in the land register, except in the index of names.

2000, c. 42, s. 76.

3058. Registration for which the date after which it will cease to be effective is restricted by law or by the application for registration expires by operation of law at midnight on the expiry date of the period fixed by law or by the application and, where applicable, entered in the register, if it has not been renewed before that time.

1991, c. 64, s. 3058; 2000, c. 42, s. 77.

3059. The registration of a right is cancelled with the consent of the holder of, or beneficiary under, that right.

Nevertheless, the registration in the land register of a hypothec or of a restriction to the right to dispose of property, or of any other right with a fixed term, which has expired because the date after which it ceases to be effective has arrived, or the registration of a hypothec which is extinguished because the time prescribed by law has elapsed, may be cancelled on presentation of an application made by any interested person; the registration in the register of personal and movable real rights of a hypothec, or of such a restriction or right which, according to the register, has expired, or the registration of an address that no longer has

effect, may be cancelled by the registrar on his own initiative. The cancellation of a registration in the register of personal and movable real rights must give reasons and be dated.

1991, c. 64, s. 3059; 2000, c. 42, s. 78.

3060. *(Repealed).*

1991, c. 64, s. 3060; 2000, c. 42, s. 79.

3061. The registration of the legal hypothec of persons having participated in the construction or renovation of an immovable is cancelled, on the application of any interested person, where, within six months after the later of the date of registration and the date of completion of the work, no action has been brought and published or no prior notice of the exercise of a hypothecary right has been published; the application must state the reasons for the cancellation and be presented with proof that it was served upon the creditors not less than ten days before its presentation to the registrar.

The registration of the legal hypothec of a syndicate of co-owners on a fraction of the co-ownership is cancelled, on the application of any interested person, upon the expiry of three years after its date, unless an action has previously been brought and published.

However, where an action has been brought and published, cancellation is obtained by registering the judgment dismissing the action or ordering the cancellation, or by filing a certificate of the clerk of the court attesting that the action has been discontinued.

1991, c. 64, s. 3061; 2000, c. 42, s. 80.

3062. Registration of a declaration of family residence is cancelled, on the application of any interested person, only in the following cases: where the married or civil union spouses consent, where one of the spouses has died and his succession is liquidated, where the spouses are separated from bed and board or are divorced, where the civil union has been dissolved, the marriage or civil union has been annulled, or where the immovable has been alienated with the consent of the spouses or with the authorization of the court.

Except where the spouses consent to the cancellation, the application shall be accompanied with a death certificate and an attested declaration of the liquidation of the succession or a copy of the judgment or the notarized joint declaration of dissolution, as the case may be.

1991, c. 64, s. 3062; 2002, c. 6, s. 62.

3063. The court may order the cancellation of a registration effected without right or irregularly, or on the basis of a title that is null or that is irregular as to form or where the registered right has been annulled, rescinded, resiliated or extinguished by prescription or otherwise.

It may also order cancellation where the immovable against which a declaration of family residence that had been registered has ceased to be used for that purpose.

1991, c. 64, s. 3063.

3064. *(Repealed).*

1991, c. 64, s. 3064; 2000, c. 42, s. 81.

3065. Total acquittance of a debt entails consent to its cancellation. Partial acquittance entails consent to only an equivalent reduction.

The creditor is bound to register the acquittance if he receives a sufficient amount to pay the registration fee and the costs of sending the application to the registry office; he may not claim any other amount, notwithstanding any stipulation to the contrary.

1991, c. 64, s. 3065.

3066. Reduction of a hypothec securing a claim to be paid with a sum of money deposited for that purpose is made by registering the judgment declaring the tender to be valid and specifying, where applicable, the person entitled to the sum of money deposited, or by registering the judgment authorizing, at the debtor's request, the reduction of the hypothec and its transfer onto the property tendered or deposited.

1991, c. 64, s. 3066.

CHAPTER II

CERTAIN CASES OF CANCELLATION

3066.1. Registration of the address of a co-owner in indivision may be cancelled on the application of any interested person.

The application for cancellation must refer to the act constituting the undivided co-ownership and the act terminating the undivided co-ownership with respect to the co-owner and contain the description of the co-owner and the registration number of his address in the register.

2000, c. 42, s. 82.

3066.2. A notice of advance registration of a judicial demand is cancelled upon registration of a judgment dismissing the demand or ordering the cancellation, or upon presentation of a certificate of the clerk of the court stating that the demand has been discontinued.

A notice of advance registration of rights arising from a will is cancelled upon the application of any interested person, if the will was not published within three years of the date of opening of the succession. The application must be accompanied with the act of death of the testator.

2000, c. 42, s. 82.

3067. Registration of a right ending at death or of a hypothec securing it may not be

cancelled without the consent of the holder or beneficiary; after his death, the person requiring the cancellation shall present the act of death and a sworn statement as to the identity of the deceased.

1991, c. 64, s. 3067.

3068. Registration of a hypothec in favour of the State is cancelled or the registered amount thereof is reduced by filing a certificate of the Attorney General or Deputy Attorney General of Québec, or of a person designated by the Attorney General, stating that the hypothec is extinguished or reduced.

It is also cancelled by filing a certificate of the Minister or Deputy Minister of Revenue or of a person designated by the Minister of Revenue, stating that the hypothec is extinguished or reduced, if the hypothec was created by virtue of an Act under the administration of that Minister.

It may further be cancelled by filing a copy of an order of the Government, certified by the clerk of the Executive Council.

1991, c. 64, s. 3068.

3069. Registration of rights extinguished by the exercise of hypothecary rights, by forced sale or by definitive sale of the property for failure to pay immovable taxes are cancelled following registration of the sale or of the taking in payment. All registrations of minutes of seizure, prior notices of sale, notices of intention to pursue a remedy or the exercise of a right and notices requiring abandonment of the taking in payment under the Book on Prior Claims and Hypothecs are thereupon cancelled by the registrar.

Where the sale is not proceeded with, registration of minutes of seizure and notices is cancelled only upon the filing of a certificate attesting to that fact issued by the clerk of the court or by the person designated to proceed with the sale.

Applications for the cancellation of a registration in the land register under this article may be in the form of a summary of the document.

1991, c. 64, s. 3069; 1992, c. 57, s. 716; 2000, c. 42, s. 83.

3070. Registration of a notice of sale for non-payment of immovable taxes and of the adjudication are cancelled following the registration of the definitive sale made by the municipal or school authority or by the act evidencing the redemption of the immovable.

Registration of the prior notice of sale for non-payment of immovable taxes is also cancelled following the production of the list of immovables that have not been sold.

The cancellation of a registration under this article may be applied for by means of a summary of the document.

1991, c. 64, s. 3070; 2000, c. 42, s. 84.

3071. Registration of a real right of State resource development is cancelled when the minister responsible for the Act governing the right notifies the registrar of the abandonment or revocation of the right not exempt from registration.

In the notice, the minister shall include the description of the abandoned or revoked right and identify the land file concerned; the abandonment or revocation is entered on the land file concerned and on the land file of the immovable on which the right was exercised.

Where the abandonment or revocation concerns a right of which the *situs* has been immatriculated, the registrar informs the minister responsible for the cadastre so that he may, by virtue of his office, cancel the immatriculation of the right.

1991, c. 64, s. 3071.

CHAPTER III

FORMALITIES AND EFFECTS OF CANCELLATION

3072. Applications for the reduction of a registration are made in accordance with the rules applicable to the appropriate register.

1991, c. 64, s. 3072.

3072.1. Applications for the cancellation of a registration or the reduction of an entry in the land register need not contain the description of the property concerned, except where a reduction in the *situs* of the registered right is applied for.

2000, c. 42, s. 85.

3073. An application based on a judgment ordering the cancellation of a published right or the reduction of a registration is not admissible unless the judgment has acquired the authority of a final judgment (*res judicata*).

Provisional execution of a judgment relating to the correction, reduction or cancellation of a registration is not admissible.

The clerk of the court is bound to issue a certificate attesting that no appeal lies from the judgment or that, the time for appeal having expired, no appeal has been taken or that, on the lapse of thirty days from the date of judgment, no motion in revocation of judgment has been filed.

1991, c. 64, s. 3073.

3074. Cancellation of the registration of a principal right authorizes cancellation of the registration of rights accessory to that right and of all references to such registrations.

1991, c. 64, s. 3074.

3075. Registration of a cancellation made without right or by error may be cancelled by order of the court on the application of any interested person.

In no case does registration of such an order affect the rights of a third person in good faith who published his right after a cancellation made without right or following an error.

1991, c. 64, s. 3075.

3075.1. Any application presented to a land registrar, including an application under article 3069 or 3070, for both the registration of a right and the cancellation of a registration or the reduction of an entry in the land register must indicate expressly, in the manner prescribed by regulation, for what purposes the application is presented.

In the absence of such indication, the registrar is only required to proceed with the registration of the right.

2000, c. 42, s. 86.

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CIVIL CODE OF QUÉBEC

S.Q., 1991, c. 64.

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BOOK TEN

PRIVATE INTERNATIONAL LAW

TITLE ONE

GENERAL PROVISIONS

3076. The rules contained in this Book apply subject to those rules of law in force in Québec which are applicable by reason of their particular object.

1991, c. 64, s. 3076.

3077. Where a country comprises several territorial units having different legislative jurisdictions, each territorial unit is regarded as a country.

Where a country comprises several legal systems applicable to different categories of persons, any reference to a law of that country is a reference to the legal system prescribed by the rules in force in that country; in the absence of such rules, any such reference is a reference to the legal system most closely connected with the situation.

1991, c. 64, s. 3077.

3078. Characterization is made according to the legal system of the court seised of the matter; however, characterization of property as movable or immovable is made according to the law of the place where it is situated.

Where a legal institution is unknown to the court or known to it under a different designation or with a different content, foreign law may be taken into account.

1991, c. 64, s. 3078.

3079. Where legitimate and manifestly preponderant interests so require, effect may be given to a mandatory provision of the law of another country with which the situation is closely connected.

In deciding whether to do so, consideration is given to the purpose of the provision and the consequences of its application.

1991, c. 64, s. 3079.

3080. Where, under the provisions of this Book, the law of a foreign country applies, the law in question is the internal law of that country, but not its rules governing conflict of laws.

1991, c. 64, s. 3080.

3081. The provisions of the law of a foreign country do not apply if their application would be manifestly inconsistent with public order as understood in international relations.

1991, c. 64, s. 3081.

3082. Exceptionally, the law designated by this Book is not applicable if, in the light of all attendant circumstances, it is clear that the situation is only remotely connected with that law and is much more closely connected with the law of another country. This provision does not apply where the law is designated in a juridical act.

1991, c. 64, s. 3082.

TITLE TWO

CONFLICT OF LAWS

CHAPTER I

PERSONAL STATUS

SECTION I

GENERAL PROVISIONS

3083. The status and capacity of a natural person are governed by the law of his domicile.

The status and capacity of a legal person are governed by the law of the country under which it was formed subject, with respect to its activities, to the law of the place where they are carried on.

1991, c. 64, s. 3083.

3084. In cases of emergency or serious inconvenience, the law of the court seized of the

matter may be applied provisionally to ensure the protection of a person or of his property.

1991, c. 64, s. 3084.

SECTION II

SPECIAL PROVISIONS

§1. — *Incapacity*

3085. Protective supervision of persons of full age and tutorship to minors are governed by the law of the domicile of each person subject thereto.

Whenever a minor or a protected person of full age domiciled outside Québec possesses property in Québec or has rights to be exercised and the law of his domicile does not provide for him to have a representative, a tutor or a curator may be appointed to represent him in all cases where a tutor or a curator may represent a minor or a protected person of full age under the laws of Québec.

1991, c. 64, s. 3085.

3086. A party to a juridical act who is incapable under the law of the country of his domicile may not invoke his incapacity if he was capable under the law of the country in which the other party was domiciled when the act was formed in that country, unless the other party was or should have been aware of the incapacity.

1991, c. 64, s. 3086; 2002, c. 19, s. 15.

3087. A legal person who is a party to a juridical act may not invoke restrictions upon the power of representation of the persons acting for it if the restrictions did not exist under the law of the country in which the other party was domiciled when the act was formed in that country, unless the other party was or should have been aware of the restrictions by virtue of his position with or relationship to the party invoking them.

1991, c. 64, s. 3087; 2002, c. 19, s. 15.

§2. — *Marriage*

3088. Marriage is governed with respect to its essential validity by the law applicable to the status of each of the intended spouses.

With respect to its formal validity, it is governed by the law of the place of its solemnization or by the law of the country of domicile or of nationality of one of the spouses.

1991, c. 64, s. 3088.

3089. The effects of marriage, particularly, those which are binding on all spouses regardless of their matrimonial regime, are subject to the law of the domicile of the spouses.

Where the spouses are domiciled in different countries, the applicable law is the law of their common residence or, failing that, the law of their last common residence or, failing that, the law of the place of solemnization of the marriage.

1991, c. 64, s. 3089.

§3. — *Separation from bed and board*

3090. Separation from bed and board is governed by the law of the domicile of the spouses.

Where the spouses are domiciled in different countries, the applicable law is the law of their common residence or, failing that, the law of their last common residence or, failing that, the law of the court seised of the case.

The effects of separation from bed and board are subject to the law governing the separation.

1991, c. 64, s. 3090.

§3.1. — *Civil union*

3090.1. A civil union is governed with respect to its essential and formal validity by the law of the place of its solemnization.

That law also applies to the effects of a civil union, except those binding all spouses regardless of the civil union regime, which are subject to the law of the country of domicile of the spouses.

2002, c. 6, s. 63.

3090.2. The dissolution of a civil union is governed by the law of the country of domicile of the spouses or by the law of the place of its solemnization. The effects of the dissolution are subject to the law governing the dissolution.

2002, c. 6, s. 63.

3090.3. Where the spouses are domiciled in different countries, the applicable law is the law of their common place of residence or, failing that, the law of their last common place of residence or, failing that, the law of the place of solemnization of the civil union or the law of the court seised of the application for dissolution, as the case may be.

2002, c. 6, s. 63.

§4. — *Filiation by blood or through adoption*

3091. Filiation is established in accordance with the law of the domicile or nationality of the child or of one of his parents, at the time of the child's birth, whichever is more beneficial to the child.

The effects of filiation are subject to the law of the domicile of the child.

1991, c. 64, s. 3091.

3092. The rules respecting consent to the adoption and the eligibility of the child for adoption are those provided by the law of his domicile.

The effects of adoption are subject to the law of the domicile of the adopter.

1991, c. 64, s. 3092.

3093. Custody of the child is governed by the law of his domicile.

1991, c. 64, s. 3093.

§5. — *Obligation of support*

3094. The obligation of support is governed by the law of the domicile of the creditor. However, where the creditor cannot obtain support from the debtor under that law, the applicable law is that of the domicile of the debtor.

1991, c. 64, s. 3094.

3095. No claim of support of a collateral relation or a person connected by marriage or a civil union is admissible if, under the law of his domicile, there is no obligation for the debtor to provide support to the plaintiff.

1991, c. 64, s. 3095; 2002, c. 6, s. 235.

3096. The obligation of support between spouses who are divorced or separated from bed and board, between spouses whose civil union is dissolved or spouses whose marriage or union has been declared null is governed by the law applicable to the divorce, separation from bed and board, dissolution of the civil union or annulment of the marriage or civil union.

1991, c. 64, s. 3096; 2002, c. 6, s. 64.

CHAPTER II

STATUS OF PROPERTY

SECTION I

GENERAL PROVISION

3097. Real rights and their publication are governed by the law of the place where the property concerned is situated.

However, real rights on property in transit are governed by the law of the country of their place of destination.

1991, c. 64, s. 3097.

SECTION II

SPECIAL PROVISIONS

§1. — *Successions*

3098. Succession to movable property is governed by the law of the last domicile of the deceased; succession to immovable property is governed by the law of the place where the property is situated.

However, a person may designate, in a will, the law applicable to his succession, provided it is the law of the country of his nationality or of his domicile at the time of the designation or of his death or that of the place where an immovable owned by him is situated, but only with regard to that immovable.

1991, c. 64, s. 3098.

3099. The designation of a law applicable to the succession is without effect to the extent that the law designated deprives the married or civil union spouse or a child of the deceased, to a large degree, of a right of succession to which, but for such designation, he or she would have been entitled.

In addition, the designation has no effect to the extent that it affects special rules of inheritance to which certain categories of property are subject under the law of the country in which they are situated because of their economic, family or social destination.

1991, c. 64, s. 3099; 2002, c. 6, s. 65.

3100. To the extent that the law on successions may not be enforced in respect of property situated outside Québec, corrective measures may be applied to property situated in Québec, in particular, by means of the restoration of shares, a new debt sharing or a compensatory deduction established by a rectified partition.

1991, c. 64, s. 3100.

3101. Where the law governing the succession of the deceased does not provide for him to have an administrator or liquidator authorized to act in Québec and the heirs have rights to be exercised in Québec or certain property of the succession is situated in Québec, an administrator or a liquidator may be appointed under the law of Québec.

1991, c. 64, s. 3101.

§2. — *Movable securities*

3102. The validity of a movable security is governed by the law of the country in which the property charged with it is situated at the time of creation of the security.

Publication and its effects are governed by the law of the country in which the property charged with the security is currently situated.

1991, c. 64, s. 3102.

3103. Any movable that is not intended to remain in the country in which it is situated may be charged with a security according to the law of the country for which it is destined; the security may be published according to the law of that country, but publication has effect only if the property actually reaches the country within thirty days of the creation of the security.

1991, c. 64, s. 3103.

3104. A security published according to the law of the country where the property was situated at the time of creation of the security will be deemed to be published in Québec, from the first publication, if it is published in Québec before any of the following events, whichever occurs first:

- (1) the cessation of effect of publication in the country where the property was situated at the time of creation of the security;
- (2) the expiry of thirty days from the time the property reaches Québec;
- (3) the expiry of fifteen days from the time the creditor is advised that the property has arrived in Québec.

However, the security may not be set up against a buyer who has acquired the property in the ordinary course of the activities of the grantor.

1991, c. 64, s. 3104; 1992, c. 57, s. 716.

3105. The validity of a security charged on a corporeal movable ordinarily used in more than one country or charged on an incorporeal movable is governed by the law of the country where the grantor was domiciled at the time of creation of the security.

Publication and its effects are governed by the law of the country in which the grantor is currently domiciled.

However, the provisions of this article do not apply to a security encumbering an incorporeal movable established by a title in bearer form or to a security published by the holding of the title exercised by the creditor.

1991, c. 64, s. 3105; 1992, c. 57, s. 716; 1998, c. 5, s. 18.

3106. A security which, when it is created, is governed by the law of the country where the

grantor is then domiciled and which has been published will be deemed to have been published in Québec, from the first publication, provided it is published in Québec before any of the following events, whichever occurs first:

- (1) the cessation of effect of publication in the country where the grantor was formerly domiciled;
- (2) the expiry of thirty days from the time the grantor established his new domicile in Québec;
- (3) the expiry of fifteen days from the time the creditor was advised of the new domicile of the grantor in Québec.

However, the security may not be set up against a buyer who has acquired the property in the ordinary course of the activities of the grantor.

1991, c. 64, s. 3106.

§3. — *Trusts*

3107. Where no law is expressly designated by, or may be inferred with certainty from, the terms of the act creating a trust, or where the law designated does not recognize the institution, the applicable law is that with which the trust is most closely connected.

To determine the applicable law, account is taken in particular of the place of administration of the trust, the place where the trust property is situated, the residence or the establishment of the trustee, the objects of the trust and the places where they are to be fulfilled.

Any severable aspect of a trust, particularly its administration, may be governed by a different law.

1991, c. 64, s. 3107.

3108. The law governing the trust determines whether the question to be resolved concerns the validity or the administration of the trust.

It also determines whether that law or the law governing a severable aspect of the trust may be replaced by the law of another country and, if so, the conditions of replacement.

1991, c. 64, s. 3108.

CHAPTER III

STATUS OF OBLIGATIONS

SECTION I

GENERAL PROVISIONS

§1. — Form of juridical acts

3109. The form of a juridical act is governed by the law of the place where it is made.

A juridical act is nevertheless valid if it is made in the form prescribed by the law applicable to the content of the act, by the law of the place where the property which is the object of the act is situated when it is made or by the law of the domicile of one of the parties when the act is made.

A testamentary disposition may be made in the form prescribed by the law of the domicile or nationality of the testator either at the time of the disposition or at the time of his death.

1991, c. 64, s. 3109.

3110. An act may be made outside Québec before a Québec notary if it pertains to a real right the object of which is situated in Québec or if one of the parties is domiciled in Québec.

1991, c. 64, s. 3110.

§2. — Content of juridical acts

3111. A juridical act, whether or not it contains any foreign element, is governed by the law expressly designated in the act or the designation of which may be inferred with certainty from the terms of the act.

A juridical act containing no foreign element remains, nevertheless, subject to the mandatory provisions of the law of the country which would apply if none were designated.

The law of a country may be expressly designated as applicable to the whole or a part only of a juridical act.

1991, c. 64, s. 3111.

3112. If no law is designated in the act or if the law designated invalidates the juridical act, the courts apply the law of the country with which the act is most closely connected, in view of its nature and the attendant circumstances.

1991, c. 64, s. 3112.

3113. A juridical act is presumed to be most closely connected with the law of the country where the party who is to perform the prestation which is characteristic of the act has his residence or, if the act is made in the ordinary course of business of an enterprise, his establishment.

1991, c. 64, s. 3113.

SECTION II

SPECIAL PROVISIONS

§1. — *Sale*

3114. If no law is designated by the parties, the sale of a corporeal movable is governed by the law of the country where the seller had his residence or, if the sale is made in the ordinary course of business of an enterprise, his establishment, at the time of formation of the contract. However, the sale is governed by the law of the country in which the buyer had his residence or his establishment at the time of formation of the contract in any of the following cases:

- (1) negotiations have taken place and the contract has been formed in that country;
- (2) the contract provides expressly that delivery shall be made in that country;
- (3) the contract is formed on terms determined mainly by the buyer, in response to a call for tenders.

If no law is designated by the parties, the sale of immovable property is governed by the law of the country where it is situated.

1991, c. 64, s. 3114.

3115. Failing any designation by the parties, a sale by auction or on a stock exchange is governed by the law of the country where the auction takes place or the exchange is situated.

1991, c. 64, s. 3115.

§2. — *Conventional representation*

3116. The existence and scope of the powers of a representative in his relations with a third person and the conditions under which his personal liability or that of the person he represents may be incurred are governed by the law expressly designated by the person represented and the third person or, where none is designated, by the law of the country in which the representative acted if the person he represents or the third person has his domicile or residence in that country.

1991, c. 64, s. 3116.

§3. — *Consumer contract*

3117. The choice by the parties of the law applicable to a consumer contract does not result in depriving the consumer of the protection to which he is entitled under the mandatory provisions of the law of the country where he has his residence if the formation of the contract was preceded by a special offer or an advertisement in that country and the consumer took all the necessary steps for the formation of the contract in that country or if the order was received from the consumer in that country.

The same rule also applies where the consumer was induced by the other contracting party to travel to a foreign country for the purpose of forming the contract.

If no law is designated by the parties, the law of the place where the consumer has his residence is, in the same circumstances, applicable to the consumer contract.

1991, c. 64, s. 3117.

§4. — *Contract of employment*

3118. The designation by the parties of the law applicable to a contract of employment does not result in depriving the worker of the protection to which he is entitled under the mandatory provisions of the law of the country where the worker habitually carries on his work, even if he is on temporary assignment in another country or, if the worker does not habitually carry on his work in any one country, the mandatory provisions of the law of the country where his employer has his domicile or establishment.

If no law is designated by the parties, the law of the country where the worker habitually carries on his work or the law of the country where his employer has his domicile or establishment is, in the same circumstances, applicable to the contract of employment.

1991, c. 64, s. 3118.

§5. — *Contract of non-marine insurance*

3119. Notwithstanding any agreement to the contrary, a contract of insurance respecting property or an interest situated in Québec or subscribed in Québec by a person resident in Québec is governed by the law of Québec if the policyholder applies therefor in Québec or the insurer signs or delivers the policy in Québec.

Similarly, a contract of group insurance of persons is governed by the law of Québec where the participant has his residence in Québec at the time he becomes a participant.

Any sum due under a contract of insurance governed by the law of Québec is payable in Québec.

1991, c. 64, s. 3119; 1992, c. 57, s. 716.

§6. — *Assignment of claim*

3120. The assignability of a claim and relations between the assignee and the assigned debtor are governed by the law governing relations between the assigned debtor and the assignor.

1991, c. 64, s. 3120.

§7. — *Arbitration*

3121. Failing any designation by the parties, an arbitration agreement is governed by the law applicable to the principal contract or, where that law invalidates the agreement, by the law of the country where arbitration takes place.

1991, c. 64, s. 3121.

§8. — *Matrimonial or civil union regime*

2002, c. 6, s. 66.

3122. The law applicable to a conventional matrimonial or civil union regime is determined according to the general rules applicable to the content of juridical acts.

1991, c. 64, s. 3122; 2002, c. 6, s. 67.

3123. The matrimonial or civil union regime of spouses who have not entered into matrimonial or civil union agreements is governed by the law of their country of domicile at the time of their marriage or civil union.

If the spouses are at that time domiciled in different countries, the applicable law is the law of their first common residence or, failing that, the law of their common nationality or, failing that, the law of the place of solemnization of their marriage or civil union.

1991, c. 64, s. 3123; 2002, c. 6, s. 68.

3124. The validity of any agreed change to a matrimonial or civil union regime is governed by the law of the domicile of the spouses at the time of the change.

If the spouses are at that time domiciled in different countries, the applicable law is the law of their common residence or, failing that, the law governing their matrimonial or civil union regime.

1991, c. 64, s. 3124; 2002, c. 6, s. 69.

§9. — *Certain other sources of obligations*

3125. Obligations based on management of the business of another, reception of a thing not due or unjust enrichment are governed by the law of the place of occurrence of the act from which they derive.

1991, c. 64, s. 3125.

§10. — *Civil liability*

3126. The obligation to make reparation for injury caused to another is governed by the law of the country where the injurious act occurred. However, if the injury appeared in another country, the law of the latter country is applicable if the person who committed the injurious act should have foreseen that the damage would occur.

In any case where the person who committed the injurious act and the victim have their domiciles or residences in the same country, the law of that country applies.

1991, c. 64, s. 3126.

3127. Where an obligation to make reparation for injury arises from nonperformance of a contractual obligation, claims based on the nonperformance are governed by the law applicable to the contract.

1991, c. 64, s. 3127.

3128. The liability of the manufacturer of a movable, whatever the source thereof, is governed, at the choice of the victim,

(1) by the law of the country where the manufacturer has his establishment or, failing that, his residence, or

(2) by the law of the country where the movable was acquired.

1991, c. 64, s. 3128.

3129. The application of the rules of this Code is imperative in matters of civil liability for damage suffered in or outside Québec as a result of exposure to or the use of raw materials, whether processed or not, originating in Québec.

1991, c. 64, s. 3129.

§11. — Evidence

3130. Evidence is governed by the law applicable to the merits of the dispute, subject to any rules of the court seised of the matter which are more favourable to the establishment of evidence.

1991, c. 64, s. 3130.

§12. — Prescription

3131. Prescription is governed by the law applicable to the merits of the dispute.

1991, c. 64, s. 3131.

CHAPTER IV

STATUS OF PROCEDURE

3132. Procedure is governed by the law of the court seised of the matter.

1991, c. 64, s. 3132.

3133. Arbitration proceedings are governed by the law of the country where arbitration takes place unless either the law of another country or an institutional or special arbitration procedure has been designated by the parties.

1991, c. 64, s. 3133; 1992, c. 57, s. 716.

TITLE THREE

INTERNATIONAL JURISDICTION OF QUÉBEC AUTHORITIES

CHAPTER I

GENERAL PROVISIONS

3134. In the absence of any special provision, the Québec authorities have jurisdiction when the defendant is domiciled in Québec.

1991, c. 64, s. 3134.

3135. Even though a Québec authority has jurisdiction to hear a dispute, it may exceptionally and on an application by a party, decline jurisdiction if it considers that the authorities of another country are in a better position to decide.

1991, c. 64, s. 3135.

3136. Even though a Québec authority has no jurisdiction to hear a dispute, it may hear it, if the dispute has a sufficient connection with Québec, where proceedings cannot possibly be instituted outside Québec or where the institution of such proceedings outside Québec cannot reasonably be required.

1991, c. 64, s. 3136.

3137. On the application of a party, a Québec authority may stay its ruling on an action brought before it if another action, between the same parties, based on the same facts and having the same object is pending before a foreign authority, provided that the latter action can result in a decision which may be recognized in Québec, or if such a decision has already been rendered by a foreign authority.

1991, c. 64, s. 3137.

3138. A Québec authority may order provisional or conservatory measures even if it has no jurisdiction over the merits of the dispute.

1991, c. 64, s. 3138.

3139. Where a Québec authority has jurisdiction to rule on the principal demand, it also has jurisdiction to rule on an incidental demand or a cross demand.

1991, c. 64, s. 3139.

3140. In cases of emergency or serious inconvenience, Québec authorities may also take such measures as they consider necessary for the protection of the person or property of a person present in Québec.

1991, c. 64, s. 3140.

CHAPTER II

SPECIAL PROVISIONS

SECTION I

PERSONAL ACTIONS OF AN EXTRAPATRIMONIAL AND FAMILY NATURE

3141. A Québec authority has jurisdiction to hear personal actions of an extrapatrimonial and family nature when one of the persons concerned is domiciled in Québec.

1991, c. 64, s. 3141.

3142. A Québec authority has jurisdiction to rule on the custody of a child provided he is domiciled in Québec.

1991, c. 64, s. 3142.

3143. A Québec authority has jurisdiction to decide cases of support or applications for review of a foreign judgment which may be recognized in Québec respecting support when one of the parties has his domicile or residence in Québec.

1991, c. 64, s. 3143.

3144. A Québec authority has jurisdiction in matters relating to the nullity of a marriage or the dissolution or nullity of a civil union when the domicile or place of residence of one of the spouses or the place of solemnization of their marriage or civil union is in Québec.

1991, c. 64, s. 3144; 2002, c. 6, s. 70.

3145. As regards the effects of marriage or a civil union, particularly those that are binding on all spouses regardless of their matrimonial or civil union regime, a Québec authority has jurisdiction when the domicile or place of residence of one of the spouses is in Québec.

1991, c. 64, s. 3145; 2002, c. 6, s. 71.

3146. A Québec authority has jurisdiction to rule on separation from bed and board when one of the spouses has his domicile or residence in Québec at the time of the institution of the proceedings.

1991, c. 64, s. 3146.

3147. A Québec authority has jurisdiction in matters of filiation if the child or one of his parents is domiciled in Québec.

It has jurisdiction in matters of adoption if the child or plaintiff is domiciled in Québec.

1991, c. 64, s. 3147.

SECTION II

PERSONAL ACTIONS OF A PATRIMONIAL NATURE

3148. In personal actions of a patrimonial nature, a Québec authority has jurisdiction where

- (1) the defendant has his domicile or his residence in Québec;
- (2) the defendant is a legal person, is not domiciled in Québec but has an establishment in Québec, and the dispute relates to its activities in Québec;
- (3) a fault was committed in Québec, damage was suffered in Québec, an injurious act occurred in Québec or one of the obligations arising from a contract was to be performed in Québec;
- (4) the parties have by agreement submitted to it all existing or future disputes between themselves arising out of a specified legal relationship;
- (5) the defendant submits to its jurisdiction.

However, a Québec authority has no jurisdiction where the parties, by agreement, have chosen to submit all existing or future disputes between themselves relating to a specified legal relationship to a foreign authority or to an arbitrator, unless the defendant submits to the jurisdiction of the Québec authority.

1991, c. 64, s. 3148.

3149. A Québec authority also has jurisdiction to hear an action involving a consumer contract or a contract of employment if the consumer or worker has his domicile or residence in Québec; the waiver of such jurisdiction by the consumer or worker may not be set up against him.

1991, c. 64, s. 3149.

3150. A Québec authority has jurisdiction to hear an action based on a contract of insurance where the holder, the insured or the beneficiary of the contract is domiciled or resident in Québec, the contract is related to an insurable interest situated in Québec or the loss took place in Québec.

1991, c. 64, s. 3150.

3151. A Québec authority has exclusive jurisdiction to hear in first instance all actions founded on liability under article 3129.

1991, c. 64, s. 3151.

SECTION III

REAL AND MIXED ACTIONS

3152. A Québec authority has jurisdiction over a real action if the property in dispute is situated in Québec.

1991, c. 64, s. 3152.

3153. A Québec authority has jurisdiction in matters of succession if the succession opens in Québec, the defendant or one of the defendants is domiciled in Québec or the deceased had elected that Québec law should govern his succession.

It also has jurisdiction if any property of the deceased is situated in Québec and a ruling is required as to the devolution or transmission of the property.

1991, c. 64, s. 3153.

3154. A Québec authority has jurisdiction in matters relating to a matrimonial or civil union regime in the following cases:

- (1) the regime is dissolved by the death of one of the spouses and the authority has jurisdiction in respect of the succession of that spouse;
- (2) the object of the proceedings relates only to property situated in Québec.

In other cases, a Québec authority has jurisdiction if one of the spouses has his or her domicile or residence in Québec on the date of institution of the proceedings.

1991, c. 64, s. 3154; 2002, c. 6, s. 72.

TITLE FOUR

RECOGNITION AND ENFORCEMENT OF FOREIGN DECISIONS AND JURISDICTION OF FOREIGN AUTHORITIES

CHAPTER I

RECOGNITION AND ENFORCEMENT OF FOREIGN DECISIONS

3155. A Québec authority recognizes and, where applicable, declares enforceable any

decision rendered outside Québec except in the following cases:

- (1) the authority of the country where the decision was rendered had no jurisdiction under the provisions of this Title;
- (2) the decision is subject to ordinary remedy or is not final or enforceable at the place where it was rendered;
- (3) the decision was rendered in contravention of the fundamental principles of procedure;
- (4) a dispute between the same parties, based on the same facts and having the same object has given rise to a decision rendered in Québec, whether it has acquired the authority of a final judgment (*res judicata*) or not, or is pending before a Québec authority, in first instance, or has been decided in a third country and the decision meets the necessary conditions for recognition in Québec;
- (5) the outcome of a foreign decision is manifestly inconsistent with public order as understood in international relations;
- (6) the decision enforces obligations arising from the taxation laws of a foreign country.

1991, c. 64, s. 3155.

3156. A decision rendered by default may not be recognized or declared enforceable unless the plaintiff proves that the act of procedure initiating the proceedings was duly served on the defaulting party in accordance with the law of the place where the decision was rendered.

However, the authority may refuse recognition or enforcement if the defaulting party proves that, owing to the circumstances, he was unable to learn of the act of procedure initiating the proceedings or was not given sufficient time to offer his defence.

1991, c. 64, s. 3156.

3157. Recognition or enforcement may not be refused on the sole ground that the original authority applied a law different from the law that would be applicable under the rules contained in this Book.

1991, c. 64, s. 3157.

3158. A Québec authority confines itself to verifying whether the decision in respect of which recognition or enforcement is sought meets the requirements prescribed in this Title, without entering into any examination of the merits of the decision.

1991, c. 64, s. 3158.

3159. Recognition or enforcement may be granted partially if the decision deals with several claims that can be dissociated.

1991, c. 64, s. 3159.

3160. A decision rendered outside Québec awarding periodic payments of support may be recognized and declared enforceable in respect of both payments due and payments to become due.

1991, c. 64, s. 3160.

3161. Where a foreign decision orders a debtor to pay a sum of money expressed in foreign currency, a Québec authority converts the sum into Canadian currency at the rate of exchange prevailing on the day the decision became enforceable at the place where it was rendered.

The determination of interest payable under a foreign decision is governed by the law of the authority that rendered the decision until its conversion.

1991, c. 64, s. 3161.

3162. A Québec authority recognizes and enforces the obligations resulting from the taxation laws of foreign countries in which the obligations resulting from the taxation laws of Québec are recognized and enforced.

1991, c. 64, s. 3162.

3163. A transaction enforceable in the place of origin is recognized and, as the case may be, declared to be enforceable in Québec on the same conditions as a judicial decision, to the extent that those conditions apply to the transaction.

1991, c. 64, s. 3163; 2002, c. 19, s. 15.

CHAPTER II

JURISDICTION OF FOREIGN AUTHORITIES

3164. The jurisdiction of foreign authorities is established in accordance with the rules on jurisdiction applicable to Québec authorities under Title Three of this Book, to the extent that the dispute is substantially connected with the country whose authority is seised of the case.

1991, c. 64, s. 3164.

3165. The jurisdiction of a foreign authority is not recognized by Québec authorities in the following cases:

- (1) where, by reason of the subject matter or an agreement between the parties, Québec law grants exclusive jurisdiction to its authorities to hear the action which gave rise to the foreign decision;
- (2) where, by reason of the subject matter or an agreement between the parties, Québec law recognizes the exclusive jurisdiction of another foreign authority;

(3) where Québec law recognizes an agreement by which exclusive jurisdiction has been conferred upon an arbitrator.

1991, c. 64, s. 3165.

3166. The jurisdiction of a foreign authority is recognized in matters of filiation where the child or either of his parents is domiciled in that country or is a national thereof.

1991, c. 64, s. 3166.

3167. The jurisdiction of a foreign authority is recognized in actions relating to divorce if one of the spouses had his or her domicile in the country where the decision was rendered or had his or her residence in that country for at least one year before the institution of the proceedings, or if the spouses are nationals of that country or, again, if the decision has been recognized in that country.

In actions relating to the dissolution of a civil union, the jurisdiction of a foreign authority is recognized only if the country concerned recognizes that institution; where that is the case, its jurisdiction is recognized subject to the same conditions as in matters of divorce.

1991, c. 64, s. 3167; 2002, c. 6, s. 73.

3168. In personal actions of a patrimonial nature, the jurisdiction of a foreign authority is recognized only in the following cases:

- (1) the defendant was domiciled in the country where the decision was rendered;
- (2) the defendant possessed an establishment in the country where the decision was rendered and the dispute relates to its activities in that country;
- (3) a prejudice was suffered in the country where the decision was rendered and it resulted from a fault which was committed in that country or from an injurious act which took place in that country;
- (4) the obligations arising from a contract were to be performed in that country;
- (5) the parties have submitted to the foreign authority disputes which have arisen or which may arise between them in respect of a specific legal relationship; however, renunciation by a consumer or a worker of the jurisdiction of the authority of his place of domicile may not be set up against him;
- (6) the defendant has recognized the jurisdiction of the foreign authority.

1991, c. 64, s. 3168.

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