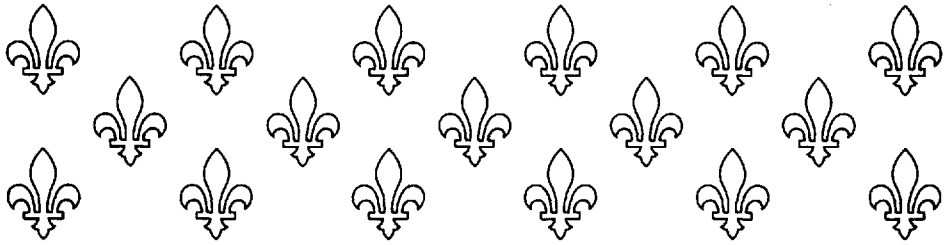

NATIONAL ASSEMBLY

SECOND SESSION THIRTY-THIRD LEGISLATURE

Draft Bill

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

Introduction

Introduced by
Mr Herbert Marx
Minister of Justice

Québec Official Publisher
1988

EXPLANATORY NOTES

The object of this draft bill is to propose a reformed law of obligations and the introduction of a new book on that subject into the Civil Code of Québec, to accompany Book Two, on family law, already adopted and in force, Books One, Three and Four, which deal with the law of persons, successions and property and which also have already been adopted, and Books Six and Nine, on priorities and hypothecs and the publication of rights.

Book Five, which adds the reformed law of obligations to the Civil Code of Québec, comprises three titles.

TITLE ONE: OBLIGATIONS IN GENERAL

Title One of Book Five deals with obligations in general and sets forth the elements of the general theory of obligations. It is divided into nine chapters.

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

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

Chapter III, dealing with damage caused to another, brings together the principle rules on civil liability, whether contractual or extracontractual. It deals with the conditions of liability, certain cases of exoneration from responsibility and the apportionment of responsibility.

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

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

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

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

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

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

TITLE TWO: NOMINATE CONTRACTS

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

Chapter I, on sale, has four sections, of which the first treats the subject in general, dealing with the promise of sale, the sale of property of another, the obligations of the seller and buyer, and special rules regarding the exercise of the rights of the parties. This first section also deals with various modes of sale, such as trial sale, instalment sale of movable property, sale with a right of redemption and auction sale, and lays down rules governing the sale of an enterprise and the sale of certain incorporeal rights, specifically

the sale of rights of succession and the sale of litigious rights. Sections II and III deal with the special rules regarding the sale of residential immovables and international sales of movable property, respectively. The final section, Section IV, is devoted to various contracts similar to sale, that is, exchange, giving in payment and alienation for rent.

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

Chapter III sets out separately, for the first time, the principal rules governing the contract of leasing.

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

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

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

Chapter VII deals with the contract of employment.

Chapter VIII, entitled "Contract for Work", comprises the rules respecting job contracts and contracts for services and includes among others, special rules respecting material works, with specific rules relating to complex immovable or movable works and residential works.

Chapter IX, respecting mandate, deals in order with the nature and scope of mandate, the mutual obligations of the parties, the obligations of the parties towards third persons and the termination of mandate.

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

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

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

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

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

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

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

TITLE THREE: SPECIAL RULES GOVERNING THE CONSUMER CONTRACT

Title Three of Book Five introduces into the Civil Code of Québec those special rules governing the consumer contract presently found in the Consumer Protection Act which are in the nature of rules of civil law. It comprises two chapters.

Chapter I contains general provisions applicable to all consumer contracts and is divided into four sections. Section I is general, dealing with the nature of the consumer contract and the scope of the rules governing it. Section II, on the formation of the contract, sets down the special conditions of formation related to consent, or the form of

contracts that must be evidenced in writing, establishes the sanction of the conditions for the formation of the contract and deals with the place of formation of a remote parties contract. Section III is devoted to the special rules of interpretation of the consumer contract. The fourth and last section deals with the effects of the contract and deals with certain obligations of the professional, the exigibility of the obligations of the consumer, prohibited clauses and stipulations, forfeiture of term clauses, and warranties.

Chapter II presents special provisions regarding certain consumer contracts, and contains five sections. The first four deal, respectively, with the special rules relating to solicited contracts, used vehicle sales contracts, repair contracts and personal improvement contracts. Lastly, the fifth and final section is concerned with contracts of credit. In addition to rules applicable to all contracts of credit, it sets down special rules applicable to the contract of variable credit.

Draft Bill

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

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. Book Five is added to the Civil Code of Québec, established by chapter 39 of the statutes of 1980, and reads as follows:

"BOOK FIVE

OBLIGATIONS

TITLE ONE

OBLIGATIONS IN GENERAL

CHAPTER ONE

GENERAL PROVISIONS

1412. It is of the essence of an obligation that there be persons between whom it exists, a prestation which forms its object, and a cause or an objective and impersonal reason which justifies its existence, such as the consideration of a counter-prestation, the intention of making a liberality or the will of acquitting a moral duty.

1413. An obligation arises from a contract or from damage caused to another as well as from other sources, such as the management of the business of another, reception of a thing not due, unjustified enrichment and, generally, any act or fact, deliberate or not, to which the effects of an obligation are attached by law.

1414. The object of an obligation is the prestation that the debtor is bound to render to the creditor. It may consist in creating or transferring a real right in property, or performing or abstaining from performing an act.

The prestation must be determinate or determinable, possible according to its own nature, and not forbidden by law or contrary to public order.

1415. An obligation to create or transfer a real right may relate to any property, even future, provided that it is determinate or determinable at least as to its species and quantity.

1416. An obligation may be pure and simple; an obligation which binds only one debtor and one creditor, which has only one object and which is immediately exigible in full from the moment it is created is a pure and simple obligation.

An obligation may also be complex, in that its existence or the time when it is exigible depends on a condition or a term, or that it has multiple debtors, creditors or objects.

1417. Every obligation, whether pure and simple or complex, confers on the creditor the right to obtain its proper performance.

It also confers on the creditor the right to take certain measures to preserve his rights, in particular to exercise the rights and actions of the debtor or to demand that the court not allow the acts of the debtor to be set up against him.

1418. Every obligation imposes on the debtor the duty to perform it and, when he has performed it in full, confers on him the rights to obtain a discharge from the creditor.

In certain cases where the creditor refuses or neglects to accept payment or cannot be found at the place where the obligation is payable, the debtor is also entitled to tender payment and to deposit the thing to release himself.

1419. Good faith must govern the conduct of the parties, from the moment the obligation is created until it is performed or extinguished.

1420. The rules set forth in this Book apply to the state and to the bodies, corporations, partnerships, agents and mandataries of the state, as well as to all other legal persons of public right, subject to any other rules of law which may be applicable to them.

CHAPTER II

CONTRACTS

SECTION I

GENERAL PROVISIONS

1421. All contracts, regardless of their nature, are subject to the general rules set out in this chapter.

Special rules relating to certain contracts, complementing the general rules or making exceptions to them, are laid down principally in Titles Two and Three of this Book.

SECTION II

NATURE AND CERTAIN CLASSES OF CONTRACTS

1422. 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 by mutual agreement and contracts of adhesion, synallagmatic and unilateral contracts, onerous and gratuitous contracts, commutative and aleatory contracts, and contracts for instantaneous performance or for successive performance.

1423. A contract by mutual agreement is a contract arising from negotiations between the parties, in which the stipulations result from reciprocal consent freely given.

A contract of adhesion is a contract in which the stipulations are imposed or drawn up by one of the parties, on his behalf or upon his instructions, and are not negotiable.

1424. 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 undertaking on the part of the latter, the contract is unilateral.

1425. A contract is onerous when each party obtains an advantage in return for his obligation.

When one party obligates himself towards the other for the benefit of the latter without obtaining any advantage in return, the contract is gratuitous.

1426. A contract is commutative when, at the time it is concluded, the importance or extent of the obligations of the parties and of the advantages obtained by them in return is certain and determinate.

When the importance or extent of the obligations of either party or of the advantages obtained by him in return is uncertain, the contract is aleatory.

1427. Where the circumstances do not preclude the obligations of the parties from being performed at one single time, the contract is a contract for instantaneous performance.

Where the circumstances absolutely require that the obligations be performed at several different times, the contract is a contract for successive performance.

SECTION III

FORMATION OF CONTRACTS

§ 1.—*Requirements for the formation of a contract*

I – General provisions

1428. A contract is formed by the sole exchange of consent between persons having capacity to contract, unless compliance with a certain form is imposed by the parties or by law as a necessary condition of its formation.

It is of the essence of a contract that it have a cause and an object.

II – Consent

1. Exchange of consent

1429. The exchange of consent is indicated by the will, either express or tacit, of a person to accept a firm offer to contract made by another person which comprises all the essential components of the proposed contract.

A firm offer to contract is an offer in which the offeror signifies his willingness to be bound if it is accepted.

1430. A contract is concluded when and where acceptance is received by the offeror, regardless of the method of communication used, and even though the parties reserve agreement as to secondary terms.

2. Offer and acceptance

1431. An offer to contract derives from the person who initiates the contract or, in certain cases, the person who determines its obligational content.

1432. An offer to contract may be made to a determinate or indeterminate person, and a term for acceptance may or may not be attached to it.

When the offer sets a term for acceptance, the offer cannot be revoked before the term has expired; otherwise, the offer may be revoked at any time before the acceptance is received by the offeror.

1433. Where the person to whom the offer is addressed receives a revocation before the offer, the offer lapses, even though a term is attached.

1434. An offer lapses if no acceptance is received by the offeror before the specified term expires or, where no term is specified, within a reasonable time.

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 party also causes the offer to lapse, if such event occurs before acceptance is received by the offeror.

1435. If the offeree rejects the offer made to him, the offeror is released in his regard by operation of law.

The offeror is similarly released if the offer, with no term attached, is made to a person face to face, or person to person by telephone or any similar means of communication and if the offeree does not accept or express any intention to consider the offer immediately.

1436. An offer to contract made to a determinate person is exclusive where it is made to that person alone, where the offeror agrees to be bound by his offer for a specified term, and where the offeree may, until the term expires, either accept or reject the offer.

An offer made to a determinate person is not, by that mere fact, presumed to be exclusive to that person.

1437. 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.

1438. Silence implies neither acceptance nor refusal of an offer and can only be interpreted as implicit consent to consider the offer, subject only to the will of the parties, the law or special circumstances, such as usage or prior business relationship.

1439. A contract made in violation of an exclusive offer may be set up against the beneficiary of the offer, but without affecting his remedy for damages against the offeror and the person having contracted with the offeror in bad faith.

The same rule applies to a contract made in violation of a preference pact, also called a promise of first option.

1440. The offer of a reward made to anyone who performs or abstains from performing an act is binding on the offeror, even if the person who performs or abstains from performing the act does not know of the offer, unless, in cases which admit of it, the offer has previously been expressly and adequately revoked by the offeror.

1441. An offer to contract made to a determinate person with a term for acceptance attached constitutes a promise to conclude the proposed contract from the moment that the offeree expressly indicates to the offeror that he intends to consider the offer.

A mere promise is not equivalent to the proposed contract; however, where the person to whom the promise has been made accepts the

promise or takes up his option, both he and the promisor are bound to conclude the contract.

3. Qualities and defects of consent

1442. Consent is either express or implied, and the person giving it must have capacity to act.

If there is no consent, the contract is absolutely null.

1443. Consent must be free, enlightened and deliberate.

Consent may be vitiated by error, fear or lesion.

1444. Error vitiates consent of the parties or of one of them where it bears on the nature of the contract, on the identity of the other contracting party or of the property forming the object of the prestation, on the substantial qualities of that object, or on any essential component that determined the consent.

An inexcusable error is deemed not to constitute a defect of consent.

1445. 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 arise from silence or from concealment.

1446. Fear of serious damage to the person or property of one of the parties vitiates consent given by that party where such fear is induced by duress exerted or known by the other party.

Threatened damage may also concern the close relatives of one of the contracting parties, and is appraised according to the circumstances.

1447. Fear induced by the abusive exercise of a right or power or by the threat to exercise it in that manner vitiates consent.

1448. Consent to a contract for the purpose of delivering the party making it from fear of serious damage is not vitiated where the other contracting party, although aware of the state of necessity, is acting in good faith.

1449. Lesion vitiates consent when it arises from the exploitation of one of the parties by the other and entails a considerable disproportion between the prestations of the parties; the mere fact that a considerable disproportion exists creates a presumption of exploitation.

Lesion can only be invoked by a natural person and only if the obligation is not contracted for the purposes or the operation of an enterprise.

1450. A party whose consent is vitiated has the right to apply for annulment of the contract. In the case of error occasioned by fraud, fear induced by duress, or lesion, he may also, as he elects, claim damages or apply for a reduction of his obligation equivalent to the damages he would be entitled to claim.

1451. In case of lesion, the court may maintain a contract the annulment of which is applied for where the defendant offers a reduction of his claim or an equitable monetary supplement.

III – Capacity to contract

1452. The rules relating to the capacity to contract are laid down principally in *Book One, Persons.*

IV – Cause of the contract

1453. The cause of a contract is the subjective and personal purpose that determines each of the parties to conclude the contract.

The cause need not be expressed in the contract.

1454. A contract without a cause or based on a cause which is prohibited by law or contrary to public order is absolutely null.

V – Object of the contract

1455. A contract which does not have as its object a juridical act envisaged by the parties at the time of its conclusion, or in which such act is prohibited by law or contrary to public order, is absolutely null.

1456. The renunciation of a succession not yet opened, or a stipulation with respect to such a succession, even with the consent of the person whose succession it is, cannot form the object of a contract.

VI – Form of the contract

1457. Where a particular form is required as a necessary condition for the formation of a contract, it must be observed; it must be observed for modifications to the contract as well, unless they are only accessory stipulations.

1458. A promise to enter into a contract is not subject to the particular form, if any, required for the contract.

The same rule applies to an offer or acceptance or any other manifestation of intent prior to the conclusion of the contract.

§ 2.—*Sanction of the conditions of formation of a contract*

I – Nature of nullity

1459. Any contract which does not meet the necessary conditions for its formation may be annulled.

1460. A contract is absolutely null where its nullity sanctions a condition of formation necessary for the protection of the general or public interest.

1461. The absolute nullity of a contract may be invoked at any time by any person having a created and present interest in doing so, or it may be raised by the court on its own initiative.

A contract that is absolutely null cannot be confirmed.

1462. A contract is relatively null where its nullity sanctions a condition of formation necessary for the protection of a private or special interest, particularly where the consent of the parties or of one of them is vitiated.

1463. The relative nullity of a contract can only be invoked by the person in whose interest the ground of nullity is established or by the other party, provided he is acting in good faith and sustains serious damage therefrom; relative nullity cannot be raised by the court on its own initiative.

A contract that is relatively null may be confirmed.

1464. Failing specific legislative provisions regarding the nature of the nullity, a contract which does not meet the necessary conditions of its formation is presumed to be relatively null.

II – Effect of nullity

1465. A contract that is null is deemed never to have existed.

In such a case, each party is bound to restore the prestations he has received under the contract to the other, if any.

III – Confirmation of the contract

1466. The confirmation of a contract results from the express or tacit intent to renounce the invocation of its nullity.

The intent to confirm must be certain and obvious.

1467. Confirmation is retroactive to the date on which the contract was concluded.

1468. Where the nullity of a contract may be invoked by each of the parties or by several of them against another party to the contract, confirmation by one of them does not prevent the others from invoking the nullity.

SECTION IV

INTERPRETATION OF CONTRACTS

1469. The common intention of the parties cannot be set aside by way of interpretation where it is clearly apparent in the contract.

1470. Where the common intention of the parties is doubtful, it shall be determined by way of interpretation rather than by adherence to the literal meaning of the words.

This rule applies in particular where the words used make the meaning obscure or ambiguous, or are inconsistent with the nature of the contract and the intention of the parties, or where the true meaning of certain clauses becomes doubtful when they are put side by side.

1471. In interpreting a contract, the nature of the contract, the circumstances in which it was concluded, the interpretation which may already have been given to it by the parties or which it may have received, and usage, must all be taken into account.

1472. Each clause of a contract must be interpreted in light of the others so that each is given the meaning suggested by the contract as a whole.

1473. A clause must be given a meaning that renders it effective rather than one that renders it ineffective.

1474. Words susceptible of two meanings must be given the meaning that best conforms to the subject-matter of the contract.

1475. 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.

1476. The clauses of a contract cover only what it appears that the parties intended to include, however general the terms used.

1477. In case of doubt, a contract must always be interpreted in favour of the debtor and against the creditor of the obligation, unless the creditor was obliged to adhere to it.

1478. The interpretation of a contract as to its effects must be made, where required, according to the laws applicable at the time of its conclusion, unless otherwise intended by the parties or required by law.

SECTION V

EFFECTS OF A CONTRACT

§ 1.—*Effects of a contract between the parties*

I – General provisions

1479. The principal effect of a contract is the creation, modification or extinction of obligations upon its formation.

In some cases, a contract also has the effect of transferring real rights.

II – Binding force and obligational content of the contract

1480. A contract regularly formed has the effect of law for the parties who have concluded it as to what they have expressed in it, subject to the limits allowed by law or public order.

1481. A contract is binding on the parties 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 equity, usage or law.

1482. An external clause referred to in a contract is binding on the parties.

In a contract of adhesion, however, an external clause is null if, at the time of the contract, it was not expressly brought to the attention of the adhering party, unless the other party proves that the adhering party knew of it at that time or that the clause was in common use.

1483. A clause in a contract of adhesion which is drawn up in such a manner or in such words as to make it illegible or incomprehensible to a reasonable person is null if the adhering party suffers damage, unless the other party proves that he expressly brought the clause to the attention of the adhering party and gave him an adequate explanation of its nature and scope.

1484. An abusive clause in a contract of adhesion is null, or the obligation arising from it may be reduced.

An abusive clause is a clause which, in the course of performance of the contract, is excessively and unreasonably detrimental to one of the parties or which deprives him of his legitimate expectations and is therefore not in good faith; a clause which so departs from the fundamental obligations which normally arise from the nature of the contract or from the rules of law governing it that it changes the nature of the contract is presumed to be an abusive clause.

1485. The nullity of a clause does not entail the nullity of the contract, unless it is apparent that the contract must be considered as an indivisible whole.

1486. A contract cannot be dissolved, terminated, modified or revoked except for reasons recognized by law or by agreement of the parties.

1487. The conclusion of a contract having the creation, acquisition, transmission or extinction of a real immovable right as its object obligates the parties to draw up a deed of their agreement setting forth its conditions.

This rule also applies to the conclusion of a contract the object of which relates to movable rights subject to registration.

III – Right to performance of contract and sanctions for nonperformance

1. Dissolution or termination of contract and reduction of obligation

1488. Where the debtor of a contractual obligation fails to perform it in full, performs it improperly or performs it only after delay, and there is no justification for such nonperformance, the creditor is entitled either to the dissolution of the contract, or termination in the case of a contract for successive performance, or to the proportional reduction of his correlative obligation, without impairing, in either case, his claim for damages.

Notwithstanding any agreement to the contrary, the creditor cannot avail himself of the rights set out in the first paragraph unless the debtor is in default of performing his obligation.

1489. Notwithstanding any agreement to the contrary, a creditor is not entitled to dissolve or terminate the contract if the alleged nonperformance of the debtor is of minor importance, unless, in the case of an obligation for successive performance, the nonperformance occurs regularly and repeatedly.

The creditor is nevertheless entitled to a proportional reduction of his correlative obligation.

1490. In assessing the proportional reduction of the correlative obligation, all the relevant circumstances, particularly the condition of the parties at the time performance of the obligation begins and the patrimonial situation in which they could be if the reduction were granted, shall be taken into consideration.

If the obligation cannot be reduced, the creditor is entitled to damages only.

1491. A contract may be dissolved or terminated without judicial proceedings where the debtor is in default of performing by operation of law or where he has failed to perform his obligation within the time allowed in the writing putting him in default.

1492. A contract which is dissolved is deemed never to have existed; each party is bound to restore to the other the prestations he has already received under the contract, if any.

A contract which is terminated ceases to exist, but only for the future.

2. Exception for nonperformance

1493. Where the obligations arising from a synallagmatic contract are exigible by both parties and one of the parties fails to perform his obligation to a substantial degree or does not offer adequate security to guarantee its performance, the other party may refuse to perform his own obligation to a corresponding degree, unless he is bound by law, the will of the parties or usage to perform first.

1494. A party to a contract may refuse to perform his own obligation, even if he is bound to perform first, where the performance on the part of the other party is seriously endangered, particularly by reason of his precarious patrimonial situation.

3. Right of retention

1495. A party who, with the consent of the other party, detains property belonging to the latter has a right of retention pending full payment of his claim against him, if the claim is exigible and is directly related to the property in his possession.

1496. The right of retention may be set up against anyone.

Involuntary dispossession does not terminate a right of retention; the party exercising the right may revendicate the property in accordance with the Code of Civil Procedure, subject to the rules on prescription.

1497. In the absence of payment or an adequate guarantee of payment, the party who exercises his right of retention may, after putting the debtor in default, sell the property detained by him or take it in payment, subject to the rights of the other creditors of the other party, if any.

§ 2.—*Effects of contract with respect to third persons*

I – General provisions

1498. A contract has effect only among the contracting parties; it does not affect third persons, except where provided by law.

1499. Upon the death of one of the parties, the rights and obligations arising from a contract pass to his heirs.

1500. The rights of a party arising from a contract pass to his particular legatees where they are accessory to property which passes to them or are directly related to it.

II – Promise for another

1501. No person can bind anyone but himself and his heirs by a contract in his own name, but he may promise in his own name that a third person will perform an obligation, and in this case he is liable for damages towards the other party to the contract if the third person fails to perform the obligation as promised.

III – Stipulation for another

1502. 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.

1503. 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.

1504. 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.

1505. Only the stipulator can revoke a stipulation; neither his heirs nor his creditors are entitled to do so.

If the promisor has an interest in maintaining the stipulation, however, the stipulator cannot revoke it without his consent.

1506. Revocation of the stipulation has effect as soon as it is made known to the promisor; if it is made by will, however, revocation has effect upon the opening of the succession.

Where a new beneficiary is not designated, revocation benefits the stipulator or his heirs.

1507. A third person beneficiary or his heirs may validly accept the stipulation, even after the stipulator or the promisor has died.

1508. A promisor may set up against the third person beneficiary such defenses as he could have set up against the stipulator.

IV – Simulation

1509. Simulation exists where the parties 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.

1510. Third persons in good faith may, according to their interest, avail themselves of the apparent contract or the counter letter; however, where conflicts of interest arise between them, preference shall be given to the person who avails himself of the apparent contract.

§ 3.—*Special effects of certain contracts*

I – Transfer of real rights

1511. The transfer of a real right in a certain and determinate movable property, or in several movable properties transferred as a universality, vests the purchaser with the right as soon as the contract is formed, even if the property is not delivered immediately and even if the price remains to be determined.

The transfer of a real right in a movable property determined only as to kind vests the acquirer with that right as soon as he is notified that the movable property is certain and determinate.

1512. If a party transfers the same real right in the same movable property to different acquirers successively, the acquirer in good faith who is first given possession of the property is vested with the real right in that property, even though his title may be later in date.

1513. The transfer of a real right in an immovable property vests the acquirer with that right as soon as the contract is formed; however, it cannot be set up against third persons except according to the rules concerning the publication of rights.

II — Fruits and risks incident to property

1514. The allocation of fruits and the assumption of risks incident to property forming the object of a real right transferred by contract are principally governed by *Book Four, Property.*

Notwithstanding the foregoing, the debtor of the obligation to deliver the property shall continue to assume the risks attached to the property until it is delivered.

CHAPTER THREE

DAMAGE CAUSED TO ANOTHER

SECTION I

CONDITIONS OF LIABILITY

§ 1.—*General provisions*

1515. Every person has a general duty to abide by the rules of conduct which rest upon him, according to the circumstances, usage or law, and to honour his contractual obligations, so as not to cause any damage to another.

A person who, by his fault, fails in this duty is responsible for any corporal, moral or material damage he causes to another and is liable for the damage.

A person is also liable, in certain cases, for the damage caused to another by the act or fault of another person or by the action of property in his custody.

1516. Notwithstanding any stipulation to the contrary, where a person is liable for the damage resulting from the nonperformance of a contractual obligation, neither the creditor nor the debtor may elude the rules governing contractual liability by opting for rules that would be more profitable to him.

The foregoing rule does not apply where the resulting damage is corporal damage, or where a manufacturer, distributor or supplier of a movable is liable under the law for the damage caused to another person by the movable; in such cases, the obligation to make reparation is governed by the provisions of this chapter, exclusively.

§ 2.—*Act or fault of another*

1517. The person having parental authority is liable for the damage caused to another through the act or fault of the minor under his authority, unless he proves that he himself did not commit any fault with regard to the custody, supervision or education of the minor.

A person deprived of parental authority is liable in the same manner, if the act or fault of the minor is related to the education he had given to him.

1518. A person who, without having parental authority, is entrusted, by delegation or otherwise but not purely by accident, with the custody, supervision or education of a minor is liable, in the same manner as the person having parental authority, for the damage caused through the act or fault of the minor.

However, a person who acts gratuitously or for only nominal remuneration is liable only where proof is made that he could have prevented the act or fault of the minor by reasonable means.

1519. A minor who is incapable of discernment cannot be held liable for the damage caused to another through his objectively wrongful conduct.

He may be held liable, however, if the victim cannot obtain reparation from the person having parental authority or the person entrusted with his custody, supervision or education and if his patrimonial situation allows him to make reparation without seriously impairing his essential needs or his future.

1520. A person of full age who is under protection or who is temporarily incapable of discernment is liable for the damage caused to another through his objectively wrongful conduct; nevertheless, he retains his remedies against the person who was entrusted with his custody at the time of the act which caused the damage, where that person himself committed an intentional or gross fault in the exercise of the custody.

1521. The principal is liable for the damage caused through the fault of his servants in the exercise of their functions; nevertheless, he retains his remedies against them where the damage results from gross or intentional fault on their part.

1522. A servant of the state or of any other legal person of public right does not cease to act in the performance of his duties by the mere

fact that he commits an act that is illegal, unauthorized or beyond the scope of his powers, or the fact that he is acting as a peace officer.

§ 3.—*Action of property*

1523. A person entrusted with the custody of property is liable for the damage resulting from the action of the property, unless he proves that he is not at fault.

1524. The owner of an animal is liable for the damage 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 equally responsible during that time.

1525. The owner of a building or the person who assumes the risk of loss or deterioration is liable for the damage caused by its ruin, even partial, where this has happened from want of repairs or from a defect of construction.

1526. The manufacturer of a movable or of part of it is liable for the damage caused to another by reason of a safety defect in the movable, even if it is incorporated with or is placed in an immovable for the service and operation of the immovable.

In the case of material damage, however, the manufacturer is liable only towards the user of the movable, if it is normally intended for personal use or consumption and was used according to its destination.

1527. A movable has a safety defect where, having regard to all the circumstances, it does not afford the safety which a reasonable person is entitled to expect, particularly by reason of a defect in its design, manufacture, preservation or presentation, or of the lack of sufficient indications as to the risks and dangers it involves or as to safety precautions.

A movable does not have a safety defect by the sole fact that a more advanced product is subsequently introduced.

1528. A person who distributes a movable under his name or as his own is liable in the same manner as the manufacturer.

The same rule applies to any supplier of the movable, whether a wholesaler or a retailer, unless he gives the victim or his heirs the identity of the manufacturer or of the person who supplied or distributed the movable to him.

SECTION II

CERTAIN CASES OF EXONERATION FROM RESPONSIBILITY

1529. A person may exonerate himself from his responsibility for damage he has caused to another if he proves that the damage results from superior force, unless he is specially obligated by contract to repair it.

A superior force is an unforeseeable event which is irresistible; it includes external causes such as the fault of the victim or of a third person.

1530. A person may exonerate himself from his responsibility for damage he has caused to another through the disclosure of a trade secret if he proves that considerations of public order prevailed and, particularly, that the disclosure of the trade secret was justified for reasons of public health or safety.

1531. The manufacturer of a movable is not liable for the damage caused by it if he proves that he himself did not introduce the movable, or that, according to the state of knowledge at the time that he introduced it, the property had no safety defect, or that the movable was neither manufactured nor distributed as part of the operation of his enterprise or for the purpose of making a profit.

Nor is he liable if he proves that the victim knew or could reasonably have known that the movable had the safety defect, or could reasonably have foreseen the damage.

1532. A person cannot exclude or limit his obligation to repair the damage he causes to another through his intentional fault, or through his gross fault, namely, such as shows rash behaviour, carelessness or gross negligence on his part.

Similarly, no person may exclude or limit his obligation to repair corporal or moral damage he causes to another.

1533. A notice, whether posted or not, stipulating the exclusion or limitation of the obligation to repair damage 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 made.

1534. A person cannot by way of a notice exclude or limit his obligation to make reparation in respect of third persons; such a notice may, however, constitute a warning of a danger.

1535. The assumption of risk by the victim, although it may be considered imprudent having regard to the circumstances, cannot be construed as an agreement of non-liability.

SECTION III

APPORTIONMENT OF RESPONSIBILITY

1536. Where the damage has been caused by several persons, the obligation to make reparation is apportioned among them according to the seriousness of the fault of each.

The victim is included in the apportionment when the damage is partly the effect of his own fault.

1537. A person who is liable for damage is not liable for any aggravation of the damage that the victim could reasonably have avoided.

1538. Where several persons have taken part in an act which has resulted in damage or have committed separate faults any of which may have caused the damage, and where it is impossible to determine in either case which fault actually caused it, they are solidarily responsible, although imperfectly.

1539. Where damage has been caused by several persons and one of them is exonerated from his responsibility by an express provision of law, the obligation to make reparation that would otherwise bind him is apportioned among the other persons liable for the damage and the victim.

CHAPTER FOUR

CERTAIN OTHER SOURCES OF OBLIGATIONS

SECTION I

MANAGEMENT OF THE BUSINESS OF ANOTHER

1540. Management of the business of another exists where a person, the manager, spontaneously and under no obligation to act,

voluntary 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.

1541. The manager shall as soon as possible inform the principal of the management he has undertaken.

1542. The manager is bound to continue the management undertaken until he can withdraw without risk of loss or until the principal, or his tutor or curator, or the liquidator of the succession, as the case may be, is able to provide for it.

The manager is in all other respects subject to the general obligations of an administrator of the property of another entrusted with simple administration, so far as they are not incompatible, having regard to the circumstances.

1543. 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.

1544. Where 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 damage he has suffered by reason of his management and not through his own fault.

The principal shall also assume any necessary or useful obligations that the manager has contracted with third persons in his name or for his benefit.

1545. Expenses or obligations are assessed as to their necessity or usefulness at the time they were incurred or contracted by the manager.

1546. Expenses incurred by the manager on an immovable belonging to the principal are treated according to the rules established for expenses incurred by a possessor in good faith.

1547. 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, where such is the case.

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.

1548. Management inopportunely undertaken by a manager is binding on the principal only to the extent of his enrichment.

SECTION II

RECEPTION OF A THING NOT DUE

1549. A person who receives a payment made in error, or merely to avoid damage to the person making it, although nothing is due from him, is obliged to restore it.

Notwithstanding the foregoing, restitution is not admitted where, in consequence of the payment, the person who received the undue payment in good faith has allowed his claim to lapse, destroyed his title or relinquished a security, saving the remedy of the person having made the payment against the true debtor.

1550. Restitution of payments not due shall be made according to the rules of restitution of prestations.

SECTION III

UNJUSTIFIED ENRICHMENT

1551. 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 the enrichment or the impoverishment is not justifiable in any way.

1552. Enrichment or impoverishment is justified where it derives from the performance of an obligation, from the failure of the person impoverished to exercise a right of which he could have availed himself against the person enriched, or from an act performed by the person impoverished for his personal and exclusive interest, at his own risk and peril or with a constant liberal intention.

1553. An indemnity is due only if the enrichment continues to exist on the day of the application; accordingly, the value of the enrichment is assessed on the day of the application, unless the circumstances indicate the intent of the person enriched to benefit unreasonably from the onerous act of another, in which case the enrichment may be assessed at the time the person was enriched.

The value of the impoverishment is assessed on the day of the application.

1554. Where, in good faith, 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 party beneficiary if the latter knew or could reasonably have known of the impoverishment.

CHAPTER FIVE

KINDS OF OBLIGATIONS

SECTION I

SIMPLE OBLIGATIONS

§ 1.—*Conditional obligation*

1555. An obligation is conditional where it is made to depend upon a future and uncertain event, either by suspending its existence until the event occurs or is certain not to occur, or by making its extinction dependent on whether or not the event occurs.

1556. An obligation is not conditional if its existence or extinction depends on an event that, unknown to the parties, has actually occurred at the time that they exchange consent; the obligation has effect or is extinguished from that time.

1557. A condition on which an obligation depends must be possible and must be neither unlawful nor contrary to public order; otherwise, it is null and renders null an obligation that is principally dependent on it.

1558. An obligation dependent for its creation on a condition that is at the sole discretion of the debtor is null; however, if the condition consists in the performance or nonperformance of an act, the obligation is valid, even where the act is at the discretion of the debtor.

1559. 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.

1560. 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.

Similarly, where an obligation is dependent on the condition that an event will not occur, but no time has been fixed, the condition is not considered fulfilled until it becomes certain that the event will not occur.

1561. A conditional obligation becomes absolute when the debtor whose obligation is subject to the condition prevents it from being fulfilled.

1562. The creditor, pending fulfilment of the condition, may take any useful measures to preserve his rights.

1563. The conditional nature of an obligation does not prevent it from being transferrable or transmissible.

1564. The fulfilment of a condition has a retroactive effect, between the parties and with respect to third persons, to the day on which the obligation was created.

1565. The fulfilment of a suspensive condition obliges the parties to perform the obligation, as though it had always existed from the day on which it was created.

The fulfilment of a resolutory condition obliges each party to return to the other the prestation he has received pursuant to the obligation, as though the obligation had never existed.

§ 2.—*Obligation with a term*

1566. An obligation with a suspensive term is a created obligation that does not become exigible until the occurrence of a future and certain event, such as a fixed date or the expiry of a period of time.

1567. Where exaction of 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.

1568. 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.

1569. A term is presumed to be stipulated 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.

1570. 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.

1571. What is due with a term cannot be exacted before the term expires, but anything performed voluntarily and without error or fraud before the expiry of the term cannot be recovered.

1572. A debtor loses the benefit of the term if he becomes notoriously 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.

1573. Renunciation of the benefit of the term or forfeiture of the term renders the obligation exigible immediately.

1574. Forfeiture of the term incurred by one of the debtors, even a solidary debtor, cannot be set up against the other codebtors.

1575. An obligation with an extinctive term is an obligation which has a duration fixed by law or by the parties and which is extinguished by expiry of the term.

SECTION II

COMPLEX OBLIGATIONS

§ 1.—*Obligations with multiple persons*

I – Joint, divisible and indivisible obligations

1576. An obligation is joint between two or more debtors where they are obligated towards the creditor for the same thing but in such a way that each debtor can only be compelled to perform the obligation separately and only up to his share of the debt.

An obligation is joint between two or more creditors where each creditor can only exact the performance of his share of the claim from the common debtor.

1577. An obligation is divisible by operation of law, unless it is validly 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.

1578. An indivisible obligation is not susceptible of division, neither among the creditors or the debtors nor among 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.

1579. A stipulation of solidarity does not make an obligation indivisible.

1580. A divisible obligation binding only one debtor and one creditor must be performed between them as if it were indivisible, but it remains divisible among the heirs.

II – Solidary obligations

1. Solidarity between debtors

1581. An obligation is solidary between the debtors where they are obligated towards 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 one releases the others towards the creditor.

1582. 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.

1583. Solidarity between debtors is not presumed; it exists only where it is expressly stipulated by the parties or is imposed by law.

Notwithstanding the foregoing, solidarity between debtors is presumed where an obligation is contracted for the benefit or the carrying on of an enterprise.

1584. Solidarity between debtors may be perfect or imperfect.

1585. Solidarity is perfect where the debtors are bound towards the creditor by virtue of the same juridical act or fact and are therefor considered to represent each other.

Solidarity is imperfect where the debtors are bound towards the creditor by virtue of different juridical acts or facts and are therefor considered not to represent each other.

1586. Where specific performance of a contractual obligation has become impossible through the fault of one or more of the solidary debtors, or after he or they have been put in default, the other co-debtors are not released from their obligation to make reparation by equivalence for damage to the creditor, but they are not liable for additional damages which may be owed to him.

The creditor cannot claim additional damages except from those co-debtors through whose fault the obligation became impossible to perform, and from those who were then in default of performing it.

1587. 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.

1588. Proceedings instituted against one of the solidary debtors do not deprive the creditor of his remedy against the others, but the debtor sued may force the other solidary debtors to intervene in the action.

1589. A solidary debtor who is sued by his creditor may set up all the defenses against him that are personal to him or that are common

to all the co-debtors, but he cannot set up defenses that are purely personal to one or several of the other co-debtors.

1590. 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 from the value of the additional contribution he would otherwise owe by that fact, to the extent of the value of the security or right of which he is deprived.

1591. A creditor who renounces solidarity in favour of one of the debtors retains his solidary remedy against the other debtors for the whole debt.

1592. A creditor who receives separately and without reserve the share of one of the solidary debtors and specifies in the receipt that it applies to that share renounces solidarity in favour of that debtor alone.

1593. Where a creditor receives separately and without reserve the share of one of the debtors in the arrears or interest of the debt and specifies in the discharge that it applies to his share, he loses his solidary remedy against that debtor for the arrears or interest accrued, but not for any that may accrue in the future, nor for the capital, unless separate payment is continued for three consecutive years.

1594. 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.

1595. A solidary debtor who has performed the obligation cannot recover from his co-debtors more than their respective shares, although he is subrogated to the rights of the creditor.

1596. 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 repair the damage caused to another, are unequal, in which case their contributions are proportional to the interest of each in the debt.

Notwithstanding the foregoing, 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, only as his sureties.

1597. A loss arising from the insolvency of a solidary debtor is equally divided among the other 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 share in the contribution.

1598. A solidary debtor sued for reimbursement by the co-debtor who has performed the obligation may raise any common defenses that have not been set up by the co-debtor against the creditor, but he cannot set up any defenses which are personal to himself or which are purely personal to one or several of the other co-debtors.

1599. The obligation of a solidary debtor is divided by operation of law among his heirs.

2. Solidarity between creditors

1600. 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 discharge for it.

1601. Performance of an obligation in favour of one of the solidary creditors releases the debtor towards the others.

1602. 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 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 debt is extinguished otherwise than by actual payment of the debt.

1603. An obligation for the benefit of a solidary creditor is divided by operation of law among his heirs.

§ 2.—*Obligations with multiple objects*

I — Alternative obligation

1604. 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 alternative if one of the prestations, though contracted as an alternative, could not be the object of the obligation when it was created.

1605. 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.

1606. A debtor can neither perform nor be compelled to perform part of one prestation and part the other.

1607. Where the debtor has the choice 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, all the prestations become impossible to perform and the impossibility of performing one or another 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.

1608. Where the creditor has the option, he shall, if one or another of the prestations becomes impossible to perform, choose one of the remaining prestations unless the impossibility of performing it is due to the fault of the debtor, in which case the creditor has the right to exact specific performance of any of the prestations that remain or reparation, by equivalence, for the damage resulting from the non-performance of the prestation that has become impossible.

If, in the same case, all the prestations become impossible to perform and the impossibility of performing one or another of them is due to the fault of the debtor, the creditor may exact reparation, by equivalence, for the damage resulting from the nonperformance of one or another of the prestations.

1609. Where all the prestations become impossible to perform through no fault of the debtor, the obligation is extinguished.

II — Facultative obligation

1610. A facultative obligation is an obligation which has only one principal prestation as its object but from which the debtor may release himself by performing another prestation.

The debtor is released if the principal prestation, through no fault on his part, becomes impossible to perform.

CHAPTER SIX

PERFORMANCE OF OBLIGATIONS

SECTION I

PAYMENT

§ 1.—*Payment in general*

1611. Payment means not only the turning over of a sum of money in satisfaction of an obligation, but also, in a more general sense, the actual performance of whatever forms the object of the obligation.

1612. 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.

1613. Payment may be made by any person, even if he has no interest in the obligation; the creditor may be put in default by the offer of a third person to perform the obligation in the name of the debtor, provided the offer is made for the benefit of the debtor and not merely to change the creditor.

Notwithstanding the foregoing, a creditor cannot be compelled to take payment from a third person if he has an interest in having the obligation performed by the debtor personally.

1614. To make a valid payment, a person must have a legal right in the thing due which entitles him to hand it over in payment.

However, payment of a sum of money or of any other thing due that is consumed by use cannot be recovered against a creditor who has used it in good faith, even though it was made by a person who had no legal right in the thing due which entitled him to hand it over in payment.

1615. Payment must be made to the creditor or to the person authorized to receive it for him.

Payment made to a third person is valid if the creditor ratifies it; in the absence of ratification, the payment is valid only to the extent of the enrichment derived from it by the creditor.

1616. Payment made to a creditor without capacity to receive it is valid only to the extent of the enrichment he derives from it.

The burden of proving the enrichment is borne by the debtor.

1617. Payment made in good faith to the apparent creditor is valid, even though it is subsequently established that he is not the rightful creditor.

1618. Payment made by a third person debtor despite a seizure is not valid against the seizing creditor who, according to his rights, may compel the third person debtor to pay again; in that case, the third person debtor has a remedy against the creditor so paid.

1619. A creditor cannot be compelled to accept something other than what is due to him, even though the thing offered is of greater value.

Nor can he be compelled to accept partial payment of an obligation unless the obligation is disputed in part. Nevertheless, if the debtor is willing to pay the undisputed part, the creditor cannot refuse to accept that part; however, he preserves his right to claim the other part of the obligation.

1620. A debtor of a certain and determinate property is released by the handing over of the property in its actual condition at the time of payment, provided that the deterioration it has suffered is not due to his act or fault and did not occur after he was in default of payment.

1621. Where the property is determinate as to its kind only, the debtor need not give one of the best quality, but he cannot offer one of the worst quality. He must take the legitimate expectations expressed by the creditor into account as to the quality of the property.

1622. Where the debt consists of a sum of money, the debtor is released by paying the amount due in money which is legal tender at the time of payment.

The debtor is also released by remitting the amount due by money order or cheque made to the order of the creditor and certified by a bank or any other financial institution carrying on business in Québec,

by credit card or other similar instrument of payment, or by any other mode of payment which relies on an electronic system for the transfer of funds, if the creditor is able to accept it.

1623. Payment must be made at the place expressly or impliedly fixed by the parties.

Where no place is fixed by the parties, payment must be made at the domicile of the debtor, unless the thing due is a certain and determinate property, in which case payment must be made at the place where the property was when the obligation arose.

1624. The expenses attending payment shall be borne by the debtor.

1625. A debtor who pays his debt is entitled to a discharge and to the surrender of the original title of the obligation, if any.

The surrender of the original title gives rise to a presumption of payment.

§ 2.—*Imputation of payment*

1626. At the time of payment, a debtor who owes several debts has the right to impute payment to the debt he intends to pay.

Notwithstanding the foregoing, the debtor cannot, 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.

1627. A debtor who owes a debt that bears interest or produces arrears cannot, without the consent of the creditor, impute a payment to the principal in preference to the interest or arrears.

Any partial payment made on principal and interest is imputed first to the interest.

1628. Where a debtor who owes several debts has accepted a receipt by which the creditor, at the time of payment, imputed payment to one specific debt, he cannot afterwards require that it be imputed to a different debt, unless the creditor has acted in bad faith.

1629. In the absence of imputation by the parties, payment is imputed first to the debt that is due.

While several debts are due, payment is imputed to the debt which the debtor has the greatest interest in paying, in consideration, particularly, of the rate of interest or the security provided.

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 become due at the same time, however, payment is imputed proportionately.

§ 3.—*Tender and deposit*

1630. Where a creditor refuses or neglects to accept payment, the debtor may make a tender.

A tender consists in placing the property which is due at the disposition of the creditor at the place and time that payment must be made. It must include, in addition to the property due, with accrued interest or arrears, a reasonable amount to cover unliquidated expenses owed by the debtor, saving the right to make up any deficiency in that amount.

1631. 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 bank or any other financial institution carrying on business in Québec, provided the amount of the cheque in currency is equal to the amount due in currency.

1632. Tender may be made by notarial deed *en minute* or by a declaration recorded in a pleading; it may also be made by any other writing or in any other manner, provided it is legally proved.

Where tender is made by notarial deed, the notary shall record the answer of the creditor in the deed and, in case of refusal, the reasons given by him.

1633. A tender of a sum of money made by declaration in a pleading must be accompanied by deposit of the sum in the office of the court or with a trust company, unless it has already been deposited and the receipt for the deposit has been filed in the record.

1634. Where payment or delivery of the property must be made at the domicile of the debtor or at the place where the property is, notice given to the creditor by the debtor that he is ready to perform the

obligation has the same effect as tender, provided that the debtor is able to make payment at the time and place that the property must be paid or delivered.

1635. Where payment or delivery of the property must be made at a place other than the domicile of the debtor or other than where the property is and it is difficult to transport the property to that place, the debtor may require the creditor to advise him of his willingness to accept the property, if he has reason to believe that the creditor will refuse it.

If the creditor fails to advise the debtor of his willingness in due time, the debtor need not deliver the thing to the place where it must be paid or delivered and notice to the creditor has the same effect as tender, provided that the debtor can show that he would have been able to make payment at the time and place that the property was to be paid or delivered.

1636. Where the property which is due is a sum of money or a security, a notice given by the debtor to the creditor that the sum of money or the security is deposited has the same effect as tender.

1637. A tender, or a notice having the same effect, must state the nature of the debt, the title under which it was created and the name of the creditor or the persons to whom payment is to be made; in addition, it must describe the property tendered and, in the case of a sum of money, include an enumeration of each denomination.

1638. A creditor is in default of receiving payment by operation of law where, without justification, he refuses a valid tender or refuses to act on the notice having the same effect, or where he clearly expresses his intention to refuse any tender that the debtor may wish to make; in this last case, the debtor need not make any tender or give any notice having the same effect.

A creditor is also in default where the debtor, despite his diligence, cannot find him, provided the debtor was able to make payment at the time and place that the property was to be paid or delivered.

1639. Where the creditor is in default of accepting payment, a debtor may take any measures necessary or useful for the preservation of the property which he owes and, in particular, entrust it to a third person for storage or custody.

In the same case, if the property is perishable, costly to preserve or subject to rapid depreciation, the debtor may sell it and deposit the proceeds.

1640. A creditor who is in default of accepting payment shall bear the reasonable costs of preservation of the property, as well as any costs that may be incurred for the sale of the property and the deposit of the proceeds.

He shall also bear the risks of loss and deterioration of the property by superior force.

1641. Deposit by the debtor of the sum of money or security which he owes is made in the general deposit office for Québec or any trust company or, during judicial proceedings, in the office of the court.

Deposit may be made not only where the creditor refuses to accept the money or security owed by the debtor, but also, among other cases, where the claim is in dispute or where the debtor is prevented from making payment by reason of the fact that the creditor cannot be found at the place where the payment must be made.

1642. A debtor may withdraw a sum of money or a security which he has deposited, so long as it has not been accepted by the creditor; if he withdraws it, neither his co-debtors nor his sureties are released.

No withdrawal may be made during proceedings, however, except by leave of the court.

1643. Where the deposit of a sum of money or of a security is declared valid and sufficient by the court, the debtor cannot withdraw it except with the consent of the creditor.

The withdrawal cannot be made, however, if it would impair the rights of third persons or prevent the release of the co-debtors or the sureties of the debtor.

1644. The deposit of a sum of money or of a security releases the debtor, for the future, from the payment of interest or income yielded if the creditor is in default of receiving payment or, in case of a dispute or of the absence of the creditor from the place where the debt is to be paid, if the deposited sum or security is declared valid and sufficient at the conclusion of the dispute or after the creditor has returned.

Nevertheless, interest or income yielded by the sum of money or the security from the date of deposit to the date of acceptance by the creditor belongs to the debtor, if the deposited sum or security is declared valid and sufficient.

1645. A tender subsequently accepted by the creditor or declared valid and sufficient 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.

1646. Where tender and deposit are declared valid and sufficient by the court, the expenses related to them shall be borne by the creditor.

SECTION II

RIGHT TO ENFORCE PERFORMANCE

§ 1.—*General provisions*

1647. Where the debtor fails to perform his obligation in full, performs it improperly or performs it only after delay, and there is no justification for such nonperformance, the creditor has the right to force specific performance of the obligation, to perform it instead of the debtor or to obtain its performance by equivalence, without prejudice to any other rights otherwise available to him under the law.

Notwithstanding the foregoing, the creditor cannot avail himself of the rights set out in the first paragraph unless the debtor is in default of performing his obligation.

§ 2.—*Default*

1648. A debtor may be in default of performing his obligation 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 of performing his obligation by an extrajudicial demand addressed to him by his creditor to perform the obligation, a judicial demand filed against him by the creditor or the sole operation of law.

1649. The extrajudicial demand by which a debtor is put in default must be in writing.

The demand must allow the debtor a sufficient time for performance, having regard to the nature of the obligation and the circumstances; otherwise, the debtor may perform the obligation within a reasonable time after the demand.

1650. 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.

Where the debtor performs the obligation within a reasonable time after the demand, the costs of the demand are borne by the creditor.

1651. 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 urgency that he do so.

A debtor is also in default where he has failed to honour his undertaking to refrain from doing a particular act, 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 he has refused or neglected, systematically and despite having been put in default repeatedly by the creditor, to render the successive performance of an obligation he had assumed.

1652. The creditor is not exempted from proving the circumstances which give rise to default by operation of law by the mere fact of the existence of a statement by the debtor or a stipulation to that effect.

1653. Where solidarity between debtors is perfect, an extrajudicial demand by which the creditor puts one of the solidary debtors, in default has effect with respect to the other debtors.

Similarly, an extrajudicial demand made by one of the solidary creditors has effect with respect to the other creditors.

1654. Where the object of the performance is a sum of money, the debtor, although he may be granted a delay of grace, is responsible for the damage 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 or deterioration resulting from superior force.

§ 3.—*Specific performance*

1655. A creditor may, in cases which admit of it, demand that the debtor be forced to make specific performance of the obligation.

§ 4.—*Performance in the place of the debtor*

1656. The creditor may perform the obligation which the debtor has failed to perform, or cause it to be performed, at the expense of the debtor.

A creditor wishing to avail himself of this right must so notify the debtor in the judicial or extrajudicial demand by which he puts him in default, except in cases where the debtor is in default by operation of law.

1657. The creditor may be authorized to destroy or remove, at the expense of the debtor, what has been made or done in violation of an undertaking by the debtor to refrain from doing or making something.

1658. Failure on the part of the debtor to perform his obligation to conclude a juridical act by onerous title or to execute an instrument of such an act gives the creditor the right to a judgment that shall stand for the juridical act, provided the act is not subject to a specific form as a necessary condition of its formation.

§ 5.—*Performance by equivalence*

I — General provisions

1659. Nonperformance of the obligation by the debtor gives the creditor, without prejudice to his other rights, the right to claim moral, corporal or material damages which are an immediate and direct consequence of the nonperformance.

1660. The obligation of the debtor to pay damages to the creditor is neither reduced nor altered by the fact that the creditor receives a payment from a third person, as a result of the damage he has sustained, except where the third person is subrogated to the rights of the creditor.

1661. A discharge, transaction or statement obtained from the creditor in connection with corporal damage he has sustained, obtained by the debtor, an insurer or their representatives within thirty days of the act which caused the damage, is null.

1662. The right of a creditor to damages may be assigned or transmitted, except his right to claim punitive damages against the debtor.

II — Assessment of damages

1. Assessment in general

1663. The damages due to the creditor are the amount of the loss he has sustained and the profit of which he has been deprived.

Future damage which is certain to occur and susceptible of measurement may be taken into account in the assessment.

1664. The loss sustained by the holder of a trade secret may include part of the investment expenses incurred for the acquisition, perfection and use of the property; the profit of which he is deprived may be compensated through payment of royalties.

1665. In contractual matters, the debtor is liable only for the damages that were foreseen or foreseeable at the time the obligation was contracted, where the failure to perform the obligation does not proceed from intentional or gross fault on his part; even then, the damages only include what is an immediate and direct consequence of the non-performance.

1666. The court may, exceptionally, reduce the amount of the damages owed by the debtor where the fault was neither intentional nor gross and where full reparation of the damage could become excessively burdensome on the debtor.

1667. Damages owed to the creditor for corporal damage he sustains are measured as to the future aspect of the damage according to the discount rate periodically set by order of the Government.

1668. The court, in awarding damages for corporal damage suffered by the creditor, may reserve the right of the parties to apply for a review of the amount awarded within a period of not over two years, if the course of the physical condition of the creditor cannot be determined with sufficient precision at the time of the judgment.

It may also, during the proceedings, order the debtor to pay provisional damages to the creditor where the latter appears to have a sufficiently serious right to them.

1669. Damages for corporal damage suffered by a minor may always be awarded, in whole or in part, in the form of an annuity; such damages may also be awarded in the same form to an adult where the seriousness and extent of the corporal damage suffered justify it.

When granting an annuity, the court may provide for its indexation according to such index as it deems appropriate.

1670. Damages which result from the nonperformance 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 without having to prove any damage.

Notwithstanding the foregoing, a creditor may stipulate that he will be entitled to additional damages, provided he justifies them.

1671. Damages owed by the debtor bear interest at the legal rate or, where such is the case, at the rate agreed by the parties, from the putting in default or from any other later date which the court considers appropriate, having regard to the nature of the damage and the circumstances.

An indemnity may be added to the amount of damages, which shall be computed by applying, from either of the dates contemplated in the foregoing paragraph, a percentage equal to the excess of the rate of interest fixed according to section 28 of the Act respecting the Ministère du Revenu over the legal rate of interest or, where such is the case, over the agreed rate of interest.

1672. Interest accrued on principal also bears interest when so provided by agreement or by law or when new interest is specially demanded in a suit.

2. Anticipated assessment of damage

1673. A penal clause is one by which the parties assess the anticipated damages by stipulating that the debtor will suffer a penalty if he fails to perform his principal obligation.

A creditor has the right to avail himself of a penal clause instead of enforcing, in cases which admit of it, the specific performance of the principal obligation; but he cannot exact both performance and penalty, unless the penalty has been stipulated for mere delay in the performance of the obligation.

1674. A creditor who avails himself of a penal clause is entitled to the amount of the stipulated penalty without having to prove the damage 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.

1675. Where an obligation with a penal clause is indivisible and non-performance is due to the fault of only one of the co-debtors, the penalty may be exacted in full against him or against each of the debtors for his share and portion, but without prejudice to their remedy against the debtor who caused the penalty to be incurred.

1676. Where an obligation with a penal clause is divisible, the penalty also is divisible and shall be 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.

The foregoing rule does not apply where the penal clause was stipulated with the intention that the payment could not be made in parts and one of the debtors has prevented the performance of the obligation for the whole; in this case, that debtor is liable for the whole penalty and the others are liable for their respective shares only, without prejudice to their remedy against him.

III — Punitive damages

1677. A creditor may demand that damages be imposed upon the debtor as a penalty, in addition to those which may be due for damage, where his fundamental rights and freedoms are impaired through the intentional or gross fault of the debtor or when the law expressly provides that punitive damages may be awarded.

1678. No claim for punitive damages may be allowed by the court if the debtor has already been punished for the damaging act under the penal law or if the debtor has already been sentenced to punitive damages for the same damaging act, unless the debtor has repeated the act.

1679. The amount of punitive damages must not exceed what is reasonably sufficient to fulfil their preventive purpose in the particular case.

Punitive damages are measured in regard to all the appropriate circumstances, in particular the patrimonial situation of the debtor, the extent of the reparation for which he is already liable to the creditor and, where such is the case, the fact that the payment of the damages is wholly or partly assumed by a third person.

1680. Punitive damages imposed upon a debtor, except that part which may be awarded as compensation for extrajudicial expenses and other expenses incurred by the creditor to assert his right, shall be paid to a person other than the creditor.

Punitive damages may be paid, for example, to a public body or association designated by the court as being directly interested in preventing damaging acts of the kind alleged against the debtor.

SECTION III

PROTECTION OF THE RIGHT TO PERFORMANCE OF THE OBLIGATION

§ 1.—*Conservatory measures*

1681. A creditor may take all necessary or useful measures to preserve his rights.

§ 2.—*Oblique action*

1682. A creditor whose claim is certain, liquid and exigible may exercise the rights and actions belonging to the debtor, in his name, where the debtor refuses or neglects to exercise them to the prejudice of the creditor.

However, a creditor cannot exercise such rights and actions as are strictly personal to the debtor.

1683. 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 debtor.

1684. Property recovered by a creditor in the name of the debtor falls into the patrimony of the debtor and benefits all his creditors, without a preferential right to the suing creditor.

§ 3.—*Direct action*

1685. A creditor who suffers serious damage through a juridical act by which his debtor, with fraudulent intent, renders himself or seeks

to render himself insolvent, or by which, being insolvent, he grants preference to an existing creditor may have it declared that the act cannot be set up against him.

1686. An onerous contract or payment is deemed to be made with fraudulent intent if the beneficiary 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.

1687. A gratuitous contract or payment is deemed to be made with fraudulent intent, even if the beneficiary was unaware of the facts, where the debtor is involvent at the time the contract or the payment is made.

1688. The claim must be certain, liquid and exigible; it must also exist prior to the juridical act which is attacked, unless such act was made for the purpose of defrauding a later ranking creditor.

1689. On pain of forfeiture, direct action must be brought within one year from the day on which the creditor learned of the damage resulting from the act which is attacked, but, in any case, never after three years of the juridical act itself.

However, where direct action is brought by a trustee in bankruptcy on behalf of all the creditors, the prescriptive period runs from the day when the trustee is appointed.

1690. Where it is declared that a contract or payment cannot be set up against the creditor, it cannot be set up against any prior creditors who take measures to protect their rights; all may have the property forming the object of the contract or payment seized and sold and be paid out of the proceeds of the sale in preference to any other creditor, subject only to the rights of those creditors holding hypothecs on the seized property.

CHAPTER SEVEN

TRANSMISSION AND TRANSFER OF OBLIGATIONS

SECTION I

ASSIGNMENT OF CLAIMS

§ 1.—*Assignment of claims in general*

1691. A creditor may assign to a third person all or part of a claim or a right of action which he has against his debtor.

The assignment must not be damaging to the rights of the debtor nor render his obligation more onerous.

1692. The assignment of a claim includes the accessories, such as accrued interest, suretyship and other securities.

1693. Where the assignment is by onerous title, the assignor shall guarantee 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 defective title at the time of the assignment.

1694. Where the assignor by onerous title guarantees the solvency of the assigned 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.

1695. An assignment may be set up against the assigned debtor as soon as he has received a copy or a pertinent abstract of the deed of assignment or any other evidence of the assignment which may be set up against the assignor, as well as when the assigned debtor has acquiesced to the assignment.

Where the assigned debtor cannot be found in Québec, the assignment may be set up against him upon publication of a notice of assignment in a newspaper distributed in the locality where he is domiciled or, if he carries on an enterprise, in the locality where it is established.

1696. An assignment of a universality of claims, present or future, may be set up against third persons and debtors who have acquiesced to it, by the registration of the assignment in the central register of personal and movable rights.

1697. An assigned debtor may set up against the assignee any payment made to the assignor as well as any other mode of extinction of the obligation, so long as the assignment cannot be set up against him.

An assigned 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 assigned debtor and third persons have been accomplished.

1698. Where a copy or an abstract of the deed of assignment or any other evidence of the assignment which may be set up against an assignor is handed over to the assigned debtor at the time of service

of an action brought against the assigned debtor, no legal costs may be exacted from the assigned debtor if he pays within the time fixed for appearance.

§ 2.—*Assignment of claim attested by a bearer instrument*

1699. 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, from hand to hand, to another bearer, of the instrument attesting it.

1700. A debtor who has issued a bearer instrument is bound to pay the debt attested thereby to any bearer who presents and hands over the instrument to him, except where he has received notice of a judgment ordering him to withhold payment thereof.

He cannot set up any defenses against the bearer other than defenses respecting nullity or defect of title, those founded on an express stipulation in the instrument or such defenses as he may raise against the bearer personally.

1701. 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.

1702. A person who has been unlawfully dispossessed of a bearer instrument cannot prevent the debtor from paying the person who presents it except on notification of an order of the court.

SECTION II

SUBROGATION

1703. A person who pays in the place of a debtor may be subrogated to the rights of the creditor, particularly to the security which the creditor holds at the time of payment.

The person does not have more rights than the subrogor.

1704. Subrogation may be conventional or legal.

1705. Conventional subrogation may be made by the creditor or the debtor, but it must be express and attested in writing.

1706. Subrogation made by the creditor must be made at the same time as he receives payment. It takes effect without the consent of the debtor, notwithstanding any stipulation to the contrary.

1707. Subrogation cannot be made by a debtor in favour of anyone except his lender and it takes effect without the consent of the creditor.

In order for subrogation to be valid in this case, the loan instrument and the discharge must each be made in the form of a notarial deed *en minute* or by a private writing before two witnesses who shall sign it. In addition, the loan instrument must state that the loan is granted for the purpose of paying the debt, and the discharge must state that the debt is paid out of the loan.

1708. Subrogation takes place by operation of law

(1) in favour of a creditor who pays another creditor whose right is preferred to his because of a priority or a hypothec;

(2) in favour of the acquirer of a property who pays a creditor whose claim is secured by a hypothec on the property;

(3) in favour of a person who pays a debt for which he is bound with others or for others and which he has an interest in paying;

(4) in favour of an heir who pays with his own funds a debt of the succession for which he was not bound;

(5) in favour of an insurer who indemnifies the creditor of an obligation to repair the damage he suffered;

(6) in any other case provided by law.

1709. Subrogation has effect against the principal debtor and his warrantors, who may set up against the subrogee the defenses they had against the original creditor.

1710. A creditor who has been only partly paid may exercise his rights in respect of the balance of his claim in preference to the subrogee from whom he has received only part of his claim.

SECTION III

NOVATION

1711. 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 the latter case, the novation has effect 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.

1712. Novation is not presumed; the intention to effect it must be evident.

1713. Priorities and hypothecs attached to the existing claim are not transferred to the claim substituted for it, unless they are expressly reserved by the creditor.

1714. Where novation is effected by substitution of a new debtor, the new debtor may set up against the creditor the defenses which the former debtor had against the creditor, but not defenses that he himself could have raised against the former debtor, unless he can invoke the nullity of the act whereby he was bound to him.

Furthermore, priorities and hypothecs attached to the existing claim cannot be transferred to the property of the new debtor; nor can they be reserved upon the property of the former debtor without his consent.

1715. Where a novation is effected between the creditor and one of the solidary debtors, priorities and hypothecs attached to the existing claim can only be reserved upon the property of the co-debtor who contracts the new debt.

1716. A novation effected between the creditor and one of the solidary debtors releases the other co-debtors in respect of the creditor; a 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.

1717. A novation which has been agreed to by one of the solidary creditors cannot be set up against the other co-creditors, except for his part of the solidary claim.

SECTION IV

DELEGATION

1718. 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 to the delegatee to make the payment; otherwise, it merely constitutes a mere indication of payment.

1719. Where the delegatee accepts the delegation, he preserves his rights against the delegant, unless he evidently intends to discharge him.

The delegatee cannot exact payment from the delegant, however, before notifying the delegate.

1720. The delegate cannot set up against the delegatee the defenses he could have raised against the delegant, even though he did not know of their existence at the time of the delegation.

The foregoing 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 delegant.

1721. The delegate may set up against the delegatee such defenses as the delegant could have set up against the delegatee.

Notwithstanding the foregoing, the delegate cannot invoke compensation based on an obligation owed by the delegant to the delegatee or by the delegatee to the delegant.

CHAPTER EIGHT

EXTINCTION OF OBLIGATIONS

SECTION I

GENERAL PROVISIONS

1722. 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 and impossibility of performance.

SECTION II

COMPENSATION

1723. Where two persons are reciprocally debtor and creditor of each other, the debts for which they are liable are extinguished by compensation, up to the amount of the lesser debt.

Notwithstanding the foregoing, compensation cannot take place in respect of the state.

1724. Compensation is effected by operation of law as soon as the debts which coexist are certain, liquid and exigible and the object of each is a sum of money or a certain quantity of fungible property identical in kind.

A party may apply for judicial liquidation of a debt in order to set it up for compensation.

1725. Compensation is effected even though the debts are not payable at the same place, provided allowance is made for the expenses of remittance, if any.

1726. A delay of grace granted for payment of one of the debts does not prevent compensation.

1727. 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 support which is exempt from seizure.

1728. Where several debts subject to compensation are owed by one debtor, the rules of imputation of payment must be followed.

1729. One of the solidary debtors cannot set up compensation for what the creditor owes to his co-debtor, except for the share of that co-debtor in the solidary debt.

A debtor, whether solidary or not, cannot set up compensation against one of the solidary creditors for what a co-creditor owes him, except for the share of that co-creditor in the solidary debt.

1730. A surety may set up compensation for what the creditor owes to the principal debtor, but the principal debtor cannot set up compensation for what the creditor owes to the surety.

1731. A debtor who has consented purely and simply to an assignment of claims by his creditor to a third person cannot afterwards set up against the assignee any compensation that he could have set up against the assignor before he consented.

An assignment to which a debtor has not consented, but which from a certain time may be set up against him, prevents compensation only for debts of the assignor which come after that time.

1732. Compensation can neither take place nor be renounced to the prejudice of the acquired rights of a third person.

1733. A debtor who could have set up compensation and has nevertheless paid his debt cannot afterwards avail himself, to the prejudice of third persons, of any priority or hypothec attached to the debt.

SECTION III

CONFUSION

1734. Where the qualities of creditor and debtor are united in the same person, confusion arises which extinguishes the obligation. Nevertheless, in certain cases where confusion ceases to exist, the effects cease also.

1735. 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.

1736. Confusion of the qualities of creditor and solidary co-debtor or of debtor and solidary co-creditor extinguishes the obligation only for the share of that co-debtor or co-creditor.

1737. A hypothec is extinguished by confusion of the qualities of hypothecary creditor and owner of the hypothecated property.

However, if the creditor is evicted for a cause which is not attributable to him, the hypothec revives.

SECTION IV

RELEASE

1738. Release takes place where the creditor releases his debtor from his obligation.

Release is full, unless it is stipulated to be partial.

1739. Release is either express or tacit.

Release is either onerous or gratuitous, according to the nature of the act from which it lies.

1740. 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.

1741. Express release granted to one of the solidary debtors discharges the other co-debtors only to the extent of his share; if one or several of the co-debtors become insolvent, the shares of the insolvents are apportioned by contribution among the other debtors, except the 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.

1742. Express release of a priority or a hypothec by a creditor does not give rise to a presumption of release of the secured debt.

1743. Express release granted to one of the sureties avails 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, in cases in which they have a remedy against the released surety and to the extent of that remedy.

SECTION V

IMPOSSIBILITY OF PERFORMANCE

1744. 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 obligation could not have been performed by the creditor 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.

1745. A debtor who has been released cannot exact performance of the correlative obligation of the creditor; if the performance has already been rendered, restitution shall be made.

Where the debtor has performed part of his obligation, the creditor remains bound to perform his own obligation to the extent of his enrichment.

CHAPTER NINE

RESTITUTION OF PRESTATIONS

SECTION I

CIRCUMSTANCES IN WHICH RESTITUTION TAKES PLACE

1746. Restitution of prestations takes place where a person is required by law to return to another person the property he has received, either unlawfully or by error, or under a juridical act which is subsequently annulled retroactively or the obligations under which 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 the mode of the restitution instead.

SECTION II

MODE OF RESTITUTION

1747. Restitution of prestations is made in kind, but, if this is impossible or cannot be done without serious inconvenience, it may be made by equivalence.

Equivalence is estimated at the time when the debtor received what he must restore.

1748. A person who has alienated a property subject to restitution is bound to return what remains of the price received and the property acquired through reinvestment of that price, in their actual condition at the time of restitution.

If the person is in bad faith or if the restitution is due to his fault, he is bound to pay the value of the alienated property computed on the date of alienation or on the date of restitution, whichever is greater.

1749. Where the property subject to restitution has perished, the person who is bound to make restitution shall pay the value of the property estimated at the time he received it or, if the property has perished through his fault, estimated at the time of restitution.

Notwithstanding the foregoing, if the property has perished by superior force, the person is exempt from making restitution, but he must assign to the creditor, as the case may be, the indemnity for the loss of the property or the right to the indemnity if he has not already received it.

1750. The person who is bound to make restitution shall indemnify the creditor for the deterioration and any other depreciation in value of the property other than that arising from normal use.

1751. The right to reimbursement for expenses incurred in respect of a property subject to restitution is governed by the provisions of *Book Four, Property* applicable to a possessor in good faith or, in case of bad faith or if the restitution is due to the fault of the person who is bound to make restitution, by those applicable to possessors in bad faith.

1752. 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 cost, to return the fruits and revenues and indemnify the creditor for any enjoyment he has derived from the property.

1753. Costs of restitution are borne by the parties, in proportion, where applicable, to the value of the prestations mutually restored.

Where one party is in bad faith or where the restitution is due to his fault, the costs are borne by that party alone.

1754. Persons under protection 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 person under protection may, however, be bound to make full restitution where restitution has become impossible through his act and that act is equivalent to a gross fault.

SECTION III

EFFECTS OF RESTITUTION

1755. Acts of alienation by onerous title performed by a person who is bound to make restitution, if made in favour of a third person in good faith, may be set up against the person to whom restitution is owed. Acts of alienation by gratuitous title cannot be set up, subject to the rules on prescription.

Any other acts performed in favour of a third person in good faith may be set up against the person to whom restitution is owed.

TITLE TWO

NOMINATE CONTRACTS

CHAPTER I

SALE

SECTION I

SALE IN GENERAL

§ 1.—*General provisions*

1756. Sale is a contract by which the seller transfers the ownership of property to the buyer for a price in money which the latter obliges himself to pay.

1757. A person charged with the sale or administration of property of another or a patrimony by appropriation or with the supervision of its administration cannot acquire such property, not even through an intermediary; nor can he sell his own property for a price paid out of the property or patrimony which he administers or the administration of which he supervises.

A person who buys or sells property contrary to the rules contained in the first paragraph is not entitled to apply for annulment of the sale; only the owner of the property or any other person having a sufficient interest in it is so entitled.

§ 2.—*Promise*

1758. The promise of sale or of purchase with tradition and actual possession is equivalent to sale.

1759. Any amount paid on the occasion of a promise of sale or of purchase is presumed to be a deposit on the price unless the right of withdrawal is expressly stipulated in the contract.

1760. The parties may avail themselves of rights conferred by the promise but not stipulated in the contract which reflect the real intention of the parties.

§ 3.—*Sale of the property of another*

1761. The sale of property by a person other than the owner or than a person charged with its sale or administration may be declared null.

1762. The true owner may apply for the annulment of the sale and claim the sold property from the buyer unless the sale was made under judicial authority or unless the buyer can set up positive prescription.

The buyer as well may apply for the nullity of the sale, except where the owner himself is disentitled to claim the property.

§ 4.—*Obligations of the seller*

1763. The seller is bound to deliver the property and to warrant the ownership and quality of the property.

The warranties exist of right whether stipulated or not in the contract of sale.

I – Delivery

1764. The obligation to deliver the property is fulfilled when the sellor puts the buyer in possession of the property or consents to his taking possession of it and all hindrances are removed.

1765. Delivery of a certain and determinate movable property is made at the place where it is. Delivery of a movable determined only as to kind is made at the place where it is to be manufactured or produced.

Where, at the time of concluding the contract, the parties do not know the specific place of delivery of the property, delivery is made by putting the property at the disposal of the buyer at the domicile or other establishment, as the case may be, of the seller.

1766. The seller is bound to deliver the property in the state it is in at the time of the sale, with all its accessories.

1767. The seller is bound to deliver the area, contents or quantity specified in the contract, whether the price is fixed according to measurements or for the whole, unless it is obvious that the certain and determinate property was sold without regard to such area, contents or quantity.

The seller is bound to deliver property conforming to the model or sample he showed to the buyer, where that is the case.

1768. A seller having granted a term for payment is not bound to deliver the property if the buyer has become insolvent since the sale.

1769. Delivery expenses are assumed by the seller and removal expenses, by the buyer.

II – Warranty of ownership

1770. The seller is bound to warrant the buyer that the property is free of all rights except those he declares at the time of the sale and those published in the registers.

The seller is bound to discharge the property of all real security, whether or not it is declared or published, unless the buyer has assumed the debt so secured.

1771. The seller is warrantor towards the buyer for any encroachments on his part unless he has declared it at the time of the sale.

The seller is also warrantor for any encroachment commenced with his knowledge by a third person before the sale.

1772. The seller of an immovable is warrantor toward the buyer for any violation of restrictions of public right affecting the property which are exceptions to the ordinary law of ownership and which cannot be discovered by a prudent and diligent buyer by reason of the nature,

location and use of the premises. The seller is also warrantor towards the buyer where such restrictions make the property unfit for the use intended by the buyer, if the seller is aware of the intended use.

The seller is not warrantor towards the buyer where he has informed him of the restrictions or where they have been published in the registers.

1773. The seller is bound to surrender to the buyer the titles of ownership in his possession and, in the case of the sale of an immovable, a copy of his deed of acquisition and any previous titles in his possession.

III — Warranty of quality

1774. 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 apparent defect that can be perceived by a diligent buyer without expert assistance or against any latent defect known to the buyer.

1775. If the property perishes or deteriorates by reason of a latent defect that existed at the time of the sale, the seller bears the loss; if the loss or deterioration 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 at the time of the loss or deterioration.

1776. A professional seller is bound to warrant the buyer against malfunction of the property sold, resulting from a defect existing before or after the sale and occurring prematurely in comparison with identical items of property or items of the same type, unless the malfunction occurs by reason of improper use of the property by the buyer.

1777. Sale under judicial authority does not give rise to any obligation of warranty of the quality of the property sold.

IV — Conventional warranty

1778. 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 exonerate himself from his personal acts.

1779. Notwithstanding any agreement to the contrary, a seller shall not exclude or limit his liability unless he has disclosed the defects in the title or property of which he was aware or could not have been unaware.

Where a buyer buys property at his own risk, however, the seller in good faith is not bound by any warranty.

§ 5. — *Obligations of the buyer*

1780. The buyer is bound to pay the price of the property sold, at the time and place of delivery. He is also bound to pay any expenses related to the deed of sale.

1781. The buyer is bound to pay interest on the sales price from the time of delivery of the property or the expiry of the period agreed by the parties.

1782. Where, at the time of the sale of movable property by a contract other than a consumer contract, the price is not fixed and the contract makes no provision for determining it, the buyer is bound to pay the price generally charged under similar circumstances for property of the same kind.

§ 6.—*Special rules regarding the exercise of the rights of the parties*

I — Rights of the buyer

1783. The buyer of movable property may, without putting the seller in default, consider the sale dissolved if the seller fails to deliver the property within a reasonable time after the sale.

1784. Where the seller is unable to deliver the area, contents or quantity specified in the contract, the buyer may obtain a reduction of the price or, if the difference causes him serious damage, dissolution 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.

1785. A buyer who discovers a risk of eviction must give notice in writing of the right or claim of the third person to the seller, specifying

the nature of the right or claim, within a reasonable time after he has become aware or should have become aware of the right or claim.

The seller cannot invoke the failure of the buyer to give the notice if he was aware of the right or claim.

1786. A buyer against whom an action is brought for defect of title may compel the seller or any other person bound by the warranty to intervene in the trial.

1787. A buyer who ascertains that the property is defective must give notice in writing of the defect to the seller within a reasonable time after discovering it. The time begins to run, where the defect appears gradually, on the day that the buyer could have suspected the seriousness and extent of the defect; in any case, the notice must be given within two years of delivery of the property.

The seller cannot invoke the failure of the buyer to give the notice if he was aware of the defect or could not have been unaware of it.

1788. A buyer may, where the title or property is defective, require the seller to perform his obligations, apply for the dissolution of the contract or the reduction of the price, or consider the sale dissolved, according to the circumstances. The same applies where the seller fails to deliver the property.

The buyer may also claim damages from the seller whether or not the seller was aware of the defects.

1789. So long as the sale is not dissolved, the seller, even after the date for delivery of the property, may complete the performance of his obligations at his own expense, provided he notifies the buyer of his intention and does not cause him unreasonable inconvenience.

In such a case, the buyer may exercise his remedies only if the seller fails to perform his obligations within a reasonable time, but he retains his right to claim damages from the seller.

II — Rights of the seller

1790. The seller of movable property may, without putting the buyer in default, consider the sale dissolved if the buyer fails to pay the price for the property and to accept delivery of it within a reasonable time.

The seller may also, where it appears that the buyer will not perform a substantial part of his obligations, stop the delivery of the property in transit.

1791. Except in the case of a sale with a term, the seller of movable property may, within thirty days of delivery, consider the sale dissolved and revendicate the property if the buyer has failed to pay the price and the property is still entire and in the same condition in the hands of the buyer.

Where the seller has notified the buyer of his intention to consider the sale dissolved if he does not receive payment of the price and the property fulfils the conditions prescribed for dissolution, the sale of the property by the buyer or its seizure by a third person is no hindrance to the rights of the seller.

1792. The seller of immovable property cannot apply for dissolution of the sale for non-payment of the price unless the contract specially stipulates that right.

If the seller fulfils the conditions for applying for dissolution, he is bound to exercise his right within five years after the sale. In exercising his right, he is subject to the rules regarding sales with a right of redemption pertaining to the conditions for taking back immovables.

§ 7.—*Various modes of sale*

I — Trial sale

1793. 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 of receiving the property.

II — Instalment sale of movable property

1794. The sale of movable property is an instalment sale where the seller reserves the ownership of the property until full payment of the sales price.

1795. An instalment sale contract relating to several items of property shall relate only to items sold on the same day.

1796. Notwithstanding any stipulation to the contrary, the seller cannot transfer to the buyer the obligation to assume the risks of loss and deterioration of the property sold until he receives full payment of the sales price.

Nor may he require the buyer to obtain his permission to move the property within Québec, or retake possession of the property without the express consent of the buyer or the court.

1797. 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.

1798. Where the buyer is in default to pay the sales price in accordance with the terms and conditions of the contract, the seller may exact immediate payment of the instalments due or retake possession of the property sold; where the contract also contains a clause of forfeiture of benefit of the term, the seller may exact payment of the balance of the sales price.

1799. Where the seller exacts immediate payment of the balance of the sales price or elects to retake possession of the property sold, he is bound to give the buyer prior notice to that effect.

The notice must state what the buyer has failed to do and set forth his rights; it must be accompanied with a statement of account, conforming, in the case of a consumer contract, to the regulations under the Consumer Protection Act.

1800. A seller who has given prior notice of twenty days to a buyer in default cannot elect any remedy other than that indicated in the notice until the expiry of the twenty days. If he then so elects, he shall give the buyer further notice.

1801. The buyer may prevent the remedy of the seller by paying the due instalments to him within twenty days after receiving the notice and the statement of account or, if it is the intention of the seller to exact immediate payment of the balance of the sales price, by returning the property to him with leave of the court.

The buyer may also, in the latter case and within the same time, apply to the court for such modifications to the terms and conditions of payment as it considers reasonable.

1802. Where the buyer has already paid one-half or more of the sales price, the seller cannot exercise his right of repossession over the property except with leave of the court.

If the court refuses leave and allows the buyer to retain the property, it may make such modifications to the terms and conditions of payment of the balance as it considers reasonable. The risks of loss and deterioration are assumed, from the judgment, by the buyer.

1803. The voluntary return or forced repossession of property extinguishes the obligations of the parties, but the seller is not bound to return the amounts he has already received.

1804. An instalment sale that is also a consumer contract must be evidenced in a writing conforming to the regulations under the Consumer Protection Act. If it is a credit sale as well, it must also conform to the requirements prescribed for contracts of credit.

Otherwise, an instalment sale is deemed a sale pure and simple; it transfers the ownership of the sold property to the buyer and the price is deemed payable at term.

III — Sale with a right of redemption

1805. A sale with a right of redemption is a sale under a suspensive condition by which the seller transfers the ownership of the property to the buyer while reserving the right to redeem it.

1806. A seller wishing to exercise his right of redemption and take back the property must give notice of his intention to the buyer and, in the case of an immovable, to any subsequent buyer against whom he intends to exercise his remedy. Notice of twenty days is required in the case of movable property and of sixty days in the case of an immovable.

He shall restore to the buyer or, in the case of an immovable, to any other subsequent buyer, the sales price he has received and reimburse to him the expenses of the sale and the amount of all necessary expenses and of such other expenses as have increased the value of the property, up to the amount of such increased value.

1807. Where the seller exercises his right of redemption in respect of an immovable, he takes back the property free of any encumbrances with which the buyer may have charged it, provided the right was registered in accordance with the rules respecting the publication of rights.

1808. The right of redemption cannot be stipulated for a term exceeding five years. If the term exceeds five years, it is reduced to five years. The stipulated term is to be strictly observed.

The term so fixed may be invoked against any person, including minors and persons under protective supervision.

1809. If the buyer of an undivided part of a property subject to a right of redemption becomes, by the effect of a partition, the buyer of the whole property, he may obligate the seller, if the seller wishes to exercise his right, to take back the whole property.

1810. Where a sale is made by several persons jointly by way of a single contract or where the seller has left several heirs, the buyer may object to the taking back of part of the property and require the joint seller or co-heir to take back the whole property.

In other respects, the rules pertaining to joint or divisible obligations, adapted as required, apply to the exercise of the right of redemption existing for the benefit of several sellers, against several buyers, or among their heirs.

1811. Where a sale with a right of redemption conceals an intention to secure a loan, it is presumed to confer a hypothec on the seller. In such a case, the seller has only the legal hypothecary remedies available to any seller.

IV — Auction sales

1812. 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.

In no case may the seller be a bidder.

1813. An auction sale is either voluntary or forced; forced sales are subject to the rules contained in the Code of Civil Procedure.

1814. The seller may fix a reserve price or any other conditions of sale. The conditions of sale cannot be set up against the successful bidder unless the auctioneer communicates them to the persons present before receiving bids.

1815. 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.

1816. In no case may a bidder withdraw his bid.

1817. 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.

1818. The seller of an immovable and the successful bidder must sign the deed of sale within ten days after either party so requests.

1819. Where an enterprise is sold at auction, the auctioneer, before remitting the sales price to the seller, must observe the formalities imposed for the sale of an enterprise.

1820. 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 on default, according to usage and after sufficient notice.

A defaulting bidder shall not bid again at a resale on default. He is bound to pay the difference between the price at which the property was sold to him and the resale price, if lesser, but is not entitled to claim any excess amount. He is also, in the case of a forced sale, liable toward 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.

1821. A successful bidder evicted from property purchased at an auction sale may, in addition to his remedies against the seizor, recover the price paid, with interest and costs of title, from the seller; he may also recover the price, with interest, from the creditors to whom it has been remitted, but they may set up the benefit of discussion against him.

He may claim damages resulting from any irregularity in the seizure or sale from the seizing creditor.

§ 8.—*Sale of an enterprise*

1822. The sale of an enterprise is a sale which has as its object the whole or nearly the whole of the property of an enterprise or a universality of property, such as the inventory, machinery, equipment or incorporeal assets, and which is made outside the ordinary course of the business of the seller.

1823. Before making payment, the buyer is bound to obtain a solemn or sworn statement from the seller containing the names and addresses of all the creditors of the seller, indicating the amount and nature of each of their claims, specifying the amounts remaining to become due, and indicating the security attached to each claim.

1824. Before paying the price, the buyer must give notice of the sale to each of the preferred and hypothecary creditors, with a request to furnish to him in writing, within fifteen days from the request, an assessment of the value the creditor attaches to his security, taking into account, in particular, the rank and amount of his security, the value of the charged property and the amount of his claim.

A creditor holding a floating hypothec is deemed to be an ordinary creditor for the purposes of the formalities of the sale.

1825. A preferred or hypothecary creditor cannot exercise his claim at the time of distribution of the sales price where he has failed to furnish the requested information to the buyer, or where the value of his security exceeds the amount of his claim.

1826. Where the value of the security of a preferred or hypothecary creditor is smaller than the amount of his claim, he shall be counted in the distribution of the sales price, but only for the excess amount.

1827. In the deed of sale, the buyer and the seller shall designate a person to whom the buyer must remit the sales price, or that part of it which is payable in cash, for distribution to the creditors.

1828. The person designated to distribute the sales price is bound to prepare a distribution statement and give a copy of it to the creditors named in the seller's statement. If it is not contested within fifteen days of sending, the designated person shall pay the creditors proportionately to their claims.

If the distribution statement is contested, the designated person shall withhold from the price whatever amount is necessary to discharge the contested part of the claim until judgment is rendered on the contestation, unless the contesting party is a creditor whose name the seller failed to declare and the seller approves the claim, in which case the creditor shall participate in the distribution.

1829. Where the buyer has observed the prescribed formalities, the creditors of the seller have no remedy against the buyer or against the property sold but they retain their remedies against the seller.

If the creditors of the seller are preferred or hypothecary creditors and have not participated or have participated only partially in the distribution, they retain the right to pursue their remedies against the sold property securing the payment of their claims.

1830. Where the prescribed formalities have not been observed, the sale of an enterprise cannot be set up against creditors of the seller who have claims prior to the payment of the sales price, unless the buyer pays them, up to the value of the property he has bought.

The fact that the sale cannot be set up must be invoked, on pain of forfeiture, within one year from the day on which the creditor becomes aware of the sale and, in any case, within three years from the deed of sale.

1831. The buyer is not liable for the failure of the designated person to distribute the sales price in accordance with the prescribed formalities. In such a case, the liability of the designated person is limited to the amount received.

1832. A sale made by a preferred or hypothecary creditor in the pursuit of his remedies, by a person charged with the administration of the property of others for the benefit of the creditors or by a public officer acting under judicial authority is not subject to the rules governing the sale of an enterprise.

Nor do those rules apply to a sale made to a partnership established by the seller with a view to purchasing the assets of the enterprise where the partnership assumes the debts of the seller, continues the enterprise and gives notice of the sale to the creditors of the seller.

§ 9.—*Sale of certain incorporeal rights*

I — Sale of rights of succession

1833. A person who sells rights of succession without specifying what property they regard warrants only his quality as an heir.

1834. The seller is bound to hand over the fruits and revenues he has received to the buyer, together with the principal of the claim due and the price of any property he has sold which formed part of the succession.

1835. The buyer is bound to reimburse the seller for the debts and liquidation expenses of the succession that he has paid and all amounts owed to him by the succession.

The buyer must also pay the debts of the succession for which the seller is liable.

II – Sale of litigious rights

1836. A right is litigious when it is uncertain, contested or contestable by the debtor, whether an action is pending or is likely to become necessary.

1837. No judge, advocate, notary or officer of justice may acquire litigious rights, or apply for the annulment of a sale of such rights to him.

1838. Where litigious rights are sold, the person from whom they are claimed is fully discharged by paying to the buyer the sales 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 cannot be exercised where the sale is made to a creditor in payment of what is due to him, to a co-heir or co-owner of the rights sold or to the possessor of the property subject to the right. Nor 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.

SECTION II

SPECIAL RULES REGARDING THE SALE OF RESIDENTIAL IMMOVABLES

1839. The sale of an existing or planned residential immovable comprising fewer than five dwellings, by the builder or a promoter, must be preceded by a preliminary contract by which a person promises to buy the immovable, whether or not the sale includes the conveyance to him of the seller's rights over the land.

The preliminary contract must stipulate that the promisor may withdraw his promise within ten days after signing it.

1840. The preliminary contract must contain, in addition to the name and address of the seller and of the promisor, an indication of the work to be performed, the sales 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 sales price is revisable, the terms and conditions of revision.

Where the contract provides for an indemnity in case of exercise of the right of withdrawal, the indemnity shall not exceed one-half of one per cent of the agreed sales price.

1841. Where a fraction of an immovable under divided co-ownership or an undivided part of a residential immovable comprising at least five dwellings is sold or where a residence forming part of a real estate development project comprising at least five residences is sold, the seller must give the buyer an information circular at the time of signing of the preliminary contract.

The same rule applies 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.

1842. The information circular complements the preliminary contract. It must contain the names of the architects, engineers, builders and promoters, a plan of the overall real estate development project and, where applicable, the general development plan of the project and a summary of the descriptive specifications. It must also contain the budget forecast, indicate the common facilities and contain information on the management of the immovable and, where applicable, the right of emphyteusis or superficies affecting the immovable.

A copy or, where such is the case, a summary of the declaration of co-ownership or indivision agreement, as the case may be, and of the by-laws of the immovable must be appended to the information circular.

1843. Where a fraction of an immovable under divided co-ownership is sold, the information circular must contain a statement of the leases granted by the promoter or the builder on the exclusive or common parts of the immovable and indicate the maximum number of fractions intended to be leased.

1844. Where the promoter or builder, by granting a lease, exceeds the maximum number indicated in the information circular, the syndicate of co-owners, after notifying the lessor and the lessee, may demand the resiliation of the lease. If there are several leases in excess of the maximum number, the most recent leases must be resiliated first.

1845. The budget forecast must be prepared by a qualified person on the basis of one year of full occupancy of the immovable; in the case of an immovable under divided co-ownership, it must be prepared for a period beginning on the date of registration of the declaration of co-ownership.

The budget must include, in particular, a statement of debts and claims, revenues and expenditures and common expenses. It must also indicate, for each fraction, the likely amount of real estate taxes, the rate of such taxes and the annual expenses payable, including, where applicable, the contribution to the contingency fund.

1846. The sale of a fraction of an immovable under co-ownership is dissolved of right where the declaration of co-ownership is not registered within thirty days after the date on which registration becomes possible.

The same rule applies to the sale of an undivided part of an immovable under co-ownership where the indivision agreement is not registered within thirty days after the signature of the preliminary contract.

1847. The buyer of a residential immovable may, within three years after the signature of the preliminary contract, apply for the annulment of the sales contract or for a reduction of the obligations resulting therefrom if the preliminary contract, the information circular or the deed of sale contains false, misleading or incomplete information on a substantial element or if the seller failed to mention an important fact.

1848. The buyer of a fraction of an immovable under divided co-ownership may request, from the syndicate of co-owners, a statement of the common expenses due by the selling co-owner. He cannot be bound to pay the expenses if he does not receive the statement within ten days after his request.

The statement given to the buyer shall be adjusted to the last annual budget of the co-owners.

1849. 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 pertaining to warranties and to the deposit of certain sums of money in trust, adapted as required. The rules also apply to sales by a real estate promoter.

SECTION III

SPECIAL RULES REGARDING INTERNATIONAL SALES OF MOVABLE PROPERTY

1850. An offer with no time limit made in connection with an international sale of movable property may be revoked at any time before the sending of an acceptance.

The acceptance of such an offer may be revoked where the revocation reaches the offeror before acceptance.

1851. Where movable property is sold in transit, the risks of loss and deterioration are assumed by the buyer from the conclusion of the contract.

1852. Where an international sale of movable property is dissolved, each party shall restore to the other party the fruits and revenues he has derived from the day on which he took possession of the property.

1853. On the occasion of an international sale of movable property, the interpretation of Book Five, *Obligations*, where applicable, shall take into account the United Nations Convention on Contracts for the International Sale of Goods adopted at Vienna in 1980.

SECTION IV

VARIOUS CONTRACTS SIMILAR TO SALE

§ 1.—*Exchange*

1854. Exchange is a contract by which the parties give property other than money to each other for other property.

1855. Where one of the parties proves, even after having received the property given to him in exchange, that the other party was not the owner of the property, he cannot be compelled to deliver the property he had promised in exchange, but only to return the property he has received.

1856. A party who is evicted of the property he has received in exchange may claim damages or recover the property he has given.

1857. In all other respects, contracts of exchange are subject to the rules on contracts of sale.

§ 2.—*Giving in payment*

1858. Giving in payment is a contract by which a debtor transfers the 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.

1859. Giving in payment is subject to the rules governing contracts of sale and the person who so transfers ownership of the property is bound to the same warranties as a seller.

Giving in payment is perfected only by delivery of the property.

1860. 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 owner of the property irrevocably or to dispose of it is null.

§ 3.—*Alienation for rent*

1861. 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.

1862. The lessee may free himself at any time from the annual payments of rent by offering to reimburse the value of the rent in principal and renouncing the restoration of the dues paid, but he cannot substitute an authorized insurer to make the payments in his place.

1863. The lessee is personally liable toward the lessor for the rent. He is not discharged from his obligation by his abandonment of the immovable or its destruction by superior force.

1864. In all other respects, contracts of alienation for rent are subject to the rules applicable to contracts of sale and to annuities.

CHAPTER II

GIFTS

SECTION I

THE NATURE AND SCOPE OF GIFTS

1865. Gift is a contract by which a donor transfers property, by gratuitous title, to a donee.

1866. A gift whereby the donor actually divests himself of the property when he transfers it is a gift *inter vivos.*

A gift whereby the transfer and the disvestment of the property are to take place only at some future time and remain conditional on the death of the donor is a gift *mortis causa.*

1867. The undertaking of the donor to give property makes him the debtor of the donee and constitutes an actual disvestment, whether or not the delivery of the gift property is subject to a term.

Similarly, the undertaking of the donor to acquire a certain and determinate property with a view to giving it or his undertaking to deliver a determinate property or a property determinable only as to kind makes him the debtor of the donee.

1868. An act by which a person renounces a right that he has not yet acquired or renounces a succession or legacy purely and simply does not constitute a gift.

1869. Where a gift is made partly by onerous title, only the value in excess of that of the charges imposed on the donee and of the remuneration paid to him constitutes a gift.

1870. An act whereby an indirect or concealed gift is made is governed by this chapter, except as to its form.

1871. The promise of a gift does not constitute a gift but only confers on the creditor of the promise the right to claim damages from the promisor equivalent to the loss incurred on the failure of the promisor to fulfil his promise.

SECTION II

CERTAIN CONDITIONS PERTAINING TO GIFTS

§ 1.—*The capacity to make and to receive gifts*

1872. Minors and protected persons of full age cannot make gifts, even where represented by their tutors or curators, except of modest sums or customary presents.

1873. Fathers and mothers or tutors may accept gifts made to minors or children conceived but yet unborn, if they are born alive and viable. Only tutors or curators may accept gifts made to protected persons of full age.

Minors and persons of full age who have tutors may accept gifts consisting of modest sums or customary presents without representation.

1874. 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.

1875. No owner, director or employee of a health or social services establishment nor member of a foster family, other than the spouse or a close relative of the donor, may accept any gift from a person sheltered in the establishment or taken in charge by the foster family.

§ 2.—*Certain rules governing the validity of gifts*

1876. The gift of property by a person who does not own it or, if charged with its administration, is not authorized to make a gift of it in the course of such administration, is null, unless the donor has expressly undertaken to acquire the property.

The donee is, however, entitled to be indemnified for the loss incurred if the nullity is due to the fault of the donor.

1877. The gift of future property is null, unless it is made by marriage contract.

The gift of both present and future property is valid as to the present property but is not valid as to the future property unless it is made by marriage contract.

1878. A gift *mortis causa* is null unless it is made by marriage contract or unless, provided it conforms to the rules of this Code respecting wills, it may be upheld as a legacy.

1879. A gift made while the donor is deemed mortally ill 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.

1880. 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 the debts and charges to come are specified in the contract.

1881. A gift *inter vivos* stipulated to be revocable by the sole will of the donor is null, even if it is made by marriage contract.

§ 3.—*The form of gifts*

1882. The gift of certain and determinate movable property is made by the sole consent of the parties accompanied with the delivery of the property. The gift of movable property determined only as to kind is made when the donee is notified that the property is certain and determinate and can be delivered to him.

1883. The gift of immovable property must, on pain of nullity, be made by notarial deed *en minute.*

SECTION III

RIGHTS AND OBLIGATIONS OF THE PARTIES

§ 1.—*General provisions*

1884. The gift of property does not give rise to any obligation of warranty on the part of the donor, who is deemed to give only such rights as he holds in the property.

1885. The donor is bound to deliver the immovable property by putting the donee in possession of it or allowing him to take possession of it, all hindrances being removed.

1886. The donor is bound to pay the expenses related to the deed of gift but the donee is bound to pay those related to the removal of the property.

1887. The donor is not liable for latent defects in the gift property.

He is liable, however, for damage caused to the donee as a result of a safety defect, if he was aware of the defect but did not disclose it at the time of the gift.

1888. The donee cannot recover from the donor a payment he has made to free the property of a right belonging to a third person or to execute a charge, except so far as the payment exceeds the benefit he derives from the gift.

The evicted donee may, however, recover from the donor the expenses paid in connection with the gift in excess of the benefit he derives from it if the eviction, whether total or partial, results from a defect in the property which the donor knew of but failed to disclose at the time of the gift.

§ 2.—*The debts of the donor*

1889. The donee, whether universal, general or particular, is personally liable for the debts of the donor at the time of the gift, up to the value of the property he receives.

Where property is given to several donees, each of them is liable for the debts only in proportion to the share he receives, subject to the rules governing indivisible debts.

1890. The exception of particular property in a universal gift or general gift does not exonerate the donee from payment of the debts, whatever the value of the property may be.

1891. Donors and donees, whether universal or general, and their creditors are entitled of right to the separation of patrimonies.

The right is exercisable against the gift property while the donee remains the owner or against the price of its alienation while it remains unpaid, for six months after the gift or such longer period as the court may determine.

1892. The gift property is used to pay the creditors of the donor, in preference to any creditor of the donee.

The rules respecting successions which regard the separation of patrimonies and liquidation apply, adapted as required, to the remainder.

1893. The donee is bound to give the proper care to the preservation of the gift property while it remains subject to the separation of patrimonies.

§ 3.—*Charges stipulated in favour of a third person*

1894. A gift may be made with a charge or a stipulation in favour of a third person.

1895. A charge stipulated in favour of several persons with no determination of their respective shares entails, upon the death of one

of them, the accrual 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 accrual.

1896. The donee is personally liable for charges on the gift property.

1897. A charge which, owing to circumstances unforeseeable at the time of the acceptance of the gift, becomes impossible or too burdensome for the donee may be changed or revoked by the court, taking account of the value of the gift and the circumstances.

1898. The revocation or lapse of a charge stipulated in favour of a third person benefits the donee, unless another beneficiary is designated.

SECTION IV

GIFTS MADE BY MARRIAGE CONTRACT

1899. Gifts made by marriage contract may be *inter vivos* or *mortis causa*.

1900. Gifts made by marriage contract are valid only if the marriage contract takes effect.

If the donor or a third person having accepted the gift dies before the contract takes effect, the gift is not null but its validity is conditional upon the taking effect of the marriage contract.

1901. Any person may make a gift *inter vivos* by marriage contract but only the future spouses, the spouses, their respective children and their common children born or yet unborn, if they are born alive and viable, may be donees.

The only persons between whom gifts *mortis causa* may be made are those entitled to be beneficiaries of gifts *inter vivos* made by marriage contract.

1902. Gifts *mortis causa*, whether universal or general, are revocable at any time and particular gifts *mortis causa* are presumed revocable.

Notwithstanding the foregoing, if a donor has stipulated that a gift is irrevocable, he cannot dispose of the property gratuitously by an act *inter vivos* or by will without the consent of the donee, unless the gift is of modest sums or customary presents. The donor continues nonetheless to hold the rights in the gift property and he remains free to alienate it by onerous title.

CHAPTER III

LEASING

1903. Leasing is a contract by which a person who operates a credit enterprise, the lessor, puts property at the disposal of another person, the user, for the purposes of the enterprise of the user, for an irrevocable term and in return for payment.

1904. The lessor shall acquire the property that is the subject of the leasing from a third person, on the application and in accordance with the instructions of the user.

The lessor shall disclose the contract of leasing in the deed of purchase.

1905. The seller of the property is directly bound toward the user by the legal and conventional warranties inherent in the contract of sale.

1906. The user assumes all risks of loss and deterioration of the property, even by superior force, from the time he takes possession of the property.

He likewise assumes all maintenance and repair expenses.

1907. In order for his right in the property to be set up against third persons, the lessor must deposit a notice containing the names of the parties and a description of the property for registration in the land register or the register of personal and movable rights, as the case may be.

1908. If the seller does not deliver the property within a reasonable time after the conclusion of the contract, the user, without putting the seller in default, may consider the contract of leasing dissolved.

If the user has derived a benefit from the contract of leasing, the lessor, when restoring the payments he has received from the user, may deduct a reasonable amount to take account of such enrichment.

1909. Upon termination of the contract of leasing, the user is bound to return the property to the lessor unless he acquires it.

If the user remains in possession of the property without acquiring it, he is presumed to lease it.

CHAPTER IV

LEASE

SECTION I

NATURE OF LEASE

1910. Lease is a contract by which a lessor, in return for a rent, undertakes to provide a lessee with the enjoyment of a movable or immovable property for a certain time.

The term of a lease is fixed or indeterminate.

1911. The lease of movable property is not presumed; a person using the property by sufferance of the owner and without opposition from him is presumed to have borrowed it by virtue of a loan for use.

The lease of immovable property is presumed where a person occupies the premises by sufferance of the owner. The term of the lease is indeterminate; the lease takes effect with occupancy and entails the obligation to pay a rent corresponding to the rental value.

SECTION II

RIGHTS AND OBLIGATIONS RESULTING FROM A LEASE

§ 1.—*General provisions*

1912. 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.

The lessor 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.

1913. The lessee is bound to pay the agreed rent and to use the property with prudence and diligence during the term of the lease.

1914. Neither the lessor nor the lessee may change the form or destination of the leased property during the term of the lease.

1915. The lessor has the right to ascertain the condition of the property, to make repairs to it and, in the case of an immovable, to have it visited by a prospective lessee or purchaser, but he is bound, except in case of urgency, to give prior notice of twenty-four hours to the lessee.

Following the notice, the lessee cannot refuse to give the lessor access to the property if the lessor exercises his right in a reasonable manner and without causing inconvenience to the lessee.

1916. The lessor is bound to warrant the lessee against disturbances of his right of enjoyment of the property and to repair the damage resulting from any such disturbance.

Before pursuing his remedies, the lessee must notify the lessor of the disturbance.

1917. The lessor is not bound to repair damage resulting from the disturbance of the enjoyment of the property by the act of a third person, unless that person is also a lessee of the property or part of it.

If the enjoyment of the property is diminished by the disturbance, however, the lessee retains his other remedies against the lessor.

1918. A lessee is bound to act in such a way as not to disturb the normal enjoyment of the other lessees.

He is bound, toward the lessor and the other lessees, to repair 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 such a case, the lessor may apply for the resiliation of the lease.

1919. 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 from the common lessor, if the disturbance persists, a reduction of rent or the resiliation of the lease, according to the circumstances.

He may also recover damages from the common lessor unless the lessor proves that he acted with prudence and diligence; in that case, the lessor may apply for reimbursement of what he has had to pay from the lessee at fault.

1920. The lessee is bound to repair the damage suffered by the lessor by reason of loss or deterioration of the leased property unless he proves that it 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.

1921. Any stipulation whereby the lessee obliges himself to repair damage caused to the leased property without his fault or by superior force is null.

1922. The non-performance of an obligation by one of the parties entitles the other party to apply for, in addition to damages, specific performance of the obligation where possible, or the resiliation of the lease where the non-performance causes serious damage to him or, in the case of the lease of an immovable, to the other occupants.

The non-performance also entitles the lessee to apply for a reduction of rent; where the court grants it, the lessor, upon remedying his failure, is entitled to reestablish the rent for the future.

§ 2.—*Repairs*

1923. 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.

1924. The lessee must allow urgent and necessary repairs to be made. A lessor who makes such repairs may even require the lessee to vacate or be dispossessed of the property temporarily but, if the repairs are not urgent, he must first obtain permission of the court, which shall also fix the conditions required to protect the rights of the lessee.

The lessee retains, according to the circumstances, the right to obtain a reduction of rent, to apply for the resiliation of the lease or, if he vacates or is dispossessed of the property temporarily, to demand compensation. The amount of the compensation may be fixed by the court at the same time as it authorizes vacation or dispossession.

1925. 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.

1926. 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 permission to make them himself.

If the court grants permission to make the repairs or improvements, it shall fix their amount and the conditions on which they shall be carried out. The lessee may then withhold from his rent the amount of the expenses incurred to carry out the authorized work, up to the amount fixed by the court.

1927. 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 permission of the court, provided they are urgent and necessary for the preservation or use of the leased property. The lessor may intervene at any time to continue the work.

The lessee may claim the reimbursement of the reasonable expenses for his management from the lessor; the lessee of a dwelling may withhold the amount of such expenses from his rent.

1928. The lessee is bound to render an account to the lessor of the repairs or improvements made to the property and to deliver to him the vouchers for the expenses he has incurred and, in the case of movable property, the replaced parts.

The lessor is bound to reimburse the lessee for any amount in excess of the rent withheld, but not in excess of the amount the lessee was authorized to disburse, where that is the case.

§ 3.—*Sublease of property and assignment of lease*

1929. A lessee may sublease all or part of the leased property or assign his lease. In either case, he is bound to give notice to that effect and the name and address of the intended sublessee or assignee to the lessor and to obtain his consent.

1930. The lessor cannot refuse to consent to the sublease of the property or the assignment of the lease without a serious reason.

If he refuses, he is bound to inform the lessee of his reasons for refusing within ten days of receiving the notice; otherwise, he is deemed to have consented to the sublease or assignment.

1931. A lessor who consents to the sublease of the property or the assignment of the lease cannot exact any payment other than the

reimbursement of any reasonable expenses resulting from the sublease or assignment.

1932. The assignment of a lease with the consent of the lessor effects novation between the parties unless, if the lease is not of a dwelling, they agree otherwise.

1933. Where the lessor brings an action against the lessee for payment of the rent, the sublessee cannot be bound towards the lessor for any amount except the rent for the sublease which he owes to the lessee at the time of the seizure; the sublessee cannot set up advance payments.

Payments made by the sublessee under a stipulation included in his lease and made known to the lessor, or in accordance with local usage are not considered to be advance payments.

1934. Where the non-performance of an obligation by a sublessee causes serious damage to the lessor or the other lessees, the lessor may apply for the resiliation of the sublease.

1935. Where a lessor fails to make the repairs and improvements he is bound to make, the sublessee may exercise the rights and remedies of the lessee to have them carried out.

SECTION III

TERMINATION OF THE LEASE

1936. A lease with a fixed term terminates of right upon expiry of the term.

A lease with an indeterminate term terminates upon resiliation by one of the parties.

1937. A lease with a fixed term may be renewed. Renewal must be express, but the lease of an immovable may be renewed tacitly.

1938. 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 as the initial lease. The renewed lease is also subject to renewal.

1939. Security given by a third person to secure the performance of the obligations of the lessee does not extend to a renewed lease.

1940. A party who intends to resiliate a lease with an indeterminate term must give the other party notice to that effect.

The notice must be of the same duration as the period fixed for payment of the rent, but of not over three months. Where the leased property is a movable, the notice must be of ten days, whatever the period fixed for payment of the rent may be.

The time until resiliation begins to run on the day that the addressee receives the notice.

1941. A lessee against whom proceedings are brought for non-payment of the rent may avoid the resiliation of the lease by paying, before judgment, the rent due, with interest fixed in accordance with section 28 of the Act respecting the Ministère du Revenu, and costs.

1942. A lease is not resiliated by the death of either party.

1943. Where the lease of an immovable is for a fixed term, the lessee must allow the premises to be visited and signs to be posted, for leasing purposes, during the three months preceding the expiry of the lease, or during the month preceding it if the lease is for less than one year.

Where the lease is for an indeterminate term, the lessee is bound by the obligation from the date of the notice of resiliation.

1944. Voluntary or judicial alienation of leased property or extinction of the lessor's title for any other reason does not terminate the lease of right.

The acquirer or the person who benefits from the extinction of the 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, he may resiliate it by giving the lessee written notice of six months from the date of alienation or extinction of the title, or notice of twelve months if more than twelve months remain before the expiry of the term; he cannot resiliate the lease, however, if it was registered before the registration of the deed of alienation or before the extinction of the title of the lessor. In the case of the lease of a movable with a fixed term, notice of one month must be given.

1945. The total expropriation of leased property terminates the lease from the date on which the expropriator 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.

In neither case may the lessee claim damages from the lessor.

1946. The lessor of an immovable may obtain the eviction of a lessee who continues to occupy the leased premises after the expiry of the lease or after the date for delivery of the premises agreed upon during the term of the lease.

1947. Upon termination of the lease, the lessee is bound to deliver the property in the condition in which he received it but he is not liable for changes resulting from normal aging of the property or superior force.

The condition of the property may be established by the description made or the photographs taken by the parties; if it is not so established, the lessee is presumed to have received the property in good condition at the beginning of the lease.

1948. Upon termination of the lease, the lessee is bound to remove all the constructions, works or plantations he has made without the express consent of the lessor.

If they cannot be removed without deteriorating the property, the lessee may abandon them; in that case, the lessor may retain them and reimburse the lessee for their cost or the increase in value given to the property, whichever is less, or remove them at the expense of the lessee or, again, if the expenses were for amenities and the property cannot be restored to its original condition, he may retain them without compensation.

1949. At the termination of the lease, the lessee has the right to abandon all the constructions, works or plantations he has made with the express consent of the lessor and to be reimbursed for their cost or the increase in value given to the leased property, whichever is less.

1950. At the termination of the lease of premises in which an enterprise is carried on, the lessor is bound to pay compensation to the lessee for the expenses he has incurred to fit out the premises as he was required to do by the terms of the lease.

The compensation must cover normal moving expenses and resettlement.

SECTION IV

SPECIAL PROVISIONS RESPECTING LEASES OF DWELLINGS

§ 1.—*Application*

1951. The provisions of this section apply to the lease of a dwelling, the rent of a room, the lease of a mobile home erected on a chassis, with or without a permanent foundation, and the lease of land intended for the installation of a mobile home. They also govern the services, accessories and dependencies attached to a dwelling, even if these are under separate lease.

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 non-residential purposes;

(3) the lease of a room situated in a hotel establishment or in a health or social services establishment, if the establishment holds a legal permit;

(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.

1952. The provisions respecting leases of dwellings are imperative and any clauses of a lease inconsistent with them are deemed null.

All other provisions of this chapter that are consistent with the provisions of this section are also imperative.

§ 2.—*The lease*

1953. Before concluding a lease, the lessor is bound to give a copy of those by-laws of the immovable which pertain to the rules respecting the enjoyment, use and maintenance of the common premises to the lessee.

The by-laws form part of the lease.

1954. The lease of a dwelling, even a lease concluded by an oral exchange of consent, must be evidenced in a writing setting forth the

name and address of the lessor, the name of the lessee and the address of the leased property, and containing the text of the mandatory particulars prescribed by regulation, in the form indicated therein.

1955. The lessor is bound to give a copy of the writing evidencing the lease to the lessee within ten days after the conclusion of the lease.

Where the lease is renewed and the parties agree to modify it, the lessor is bound to give a writing evidencing the new lease or the modifications to the initial lease to the lessee before the beginning of the renewal.

The lessee is not entitled to apply for the termination of the lease on the ground that the lessor has failed to give him the writing.

1956. At the time of concluding a lease, the lessor must give a writing to the lessee, indicating the lowest rent paid in the twelve months preceding the beginning of the lease or the rent fixed by the court during that same period, as the case may be, and any other information prescribed by regulation, in the form indicated therein.

This obligation does not apply in the case of the lease of an immovable referred to in articles 2015 and 2016.

1957. The writing evidencing the lease and the by-laws of the immovable must be drawn up in French. They may, however, be drawn up in another language at the express wish of the parties.

1958. Every notice relating to a lease, except notice given by the lessor with a view to having access to the dwelling, must be given in writing at the address indicated in the lease or, after the conclusion of the lease, at the new address of the party, if the other party has been informed of it; the notice must be drawn up in the same language as the lease and conform to the rules prescribed by regulation.

A notice that does not conform to the prescribed requirements cannot be set up against the addressee unless the person who gave it proves to the court that the addressee has not suffered any damage as a consequence.

1959. A lessor cannot refuse to conclude 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 space in the dwelling; nor may 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.

Nor can he make the conclusion of a lease depend upon the conclusion of another contract between himself and the lessee.

1960. A clause whereby a lessor limits or exonerates himself from his liability or renders the lessee liable for damage caused without his fault is null.

A clause to modify the rights of a lessee by reason of an increase in the number of members of his family, unless the space in the dwelling justifies 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 null.

1961. A clause stipulating a penalty in an amount exceeding the damage actually suffered by the lessor, or imposing an obligation on the lessee which is unreasonable in the circumstances, is a harsh clause.

Such a clause may be annulled or any obligation arising from it may be reduced.

§ 3.—*Rent*

1962. The rent is fixed 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.

1963. The lessor cannot exact instalments in excess of one month's rent each, or payment in advance of rent for more than one payment period or, if the period exceeds one month, of more than one month's rent.

Nor can he exact any amount of money other than the rent, in the form of a deposit or otherwise, or demand that payment be made by postdated cheque or any other postdated instrument.

1964. Any 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 null.

1965. Any clause in a lease with a fixed term of twelve months or less allowing a variation in the rent during the term of the lease is null.

Where the term of a lease is more than twelve months, the parties may agree that the rent will be adjusted according to a predetermined

percentage or to a variation in certain costs, such as the real estate taxes and service taxes affecting the immovable, the fire insurance and liability insurance premiums and the unit cost of fuel or electricity assumed by the lessor. The rent cannot be adjusted during the first twelve months of the lease, nor more than once during each twelve month period. The lessor cannot adjust the rent except on prior notice of one month to the lessee.

1966. A lessee authorized by the court to perform an unperformed obligation of the lessor or to cause it to be performed is bound to act in accordance with the conditions fixed by the court. He may withhold his expenses incurred therefor from his rent, up to the amount fixed by the court.

The parties have the same obligations as where the lessee himself makes repairs or improvements to the leased property.

1967. The lessee may also, where the lessor fails to perform his obligations, deposit his rent in the office of the court, provided he gives the lessor prior notice of ten days indicating the grounds for depositing it and obtains the permission of the court.

The court shall permit the deposit of the rent if, after hearing the parties, it concludes that the lessee appears to have a valid reason for depositing it. The court shall fix the amount and conditions of the deposit.

1968. The lessor may apply to the court for the recovery of the rent deposited and for a ruling on the rights of the parties.

The court shall authorize the remittance of the deposit to the lessor if he has performed his obligations or if the deposit was made without a valid reason; otherwise, it may permit the lessee to continue to deposit his rent until the lessor performs his obligations, or authorize the remittance of the deposit to the lessee to enable him to perform the obligations himself.

1969. Where, following the alienation of an immovable, the registration of a hypothec against the rent or a transfer of debts, the lessee is not personally informed of the name and address of the new lessor or of the person to whom he must pay the rent, he may, with the permission of the court, deposit his rent in the office of the court.

§ 4.—*Condition of the dwelling*

1970. A lessor cannot offer a dwelling for rent or deliver it unless it is in good habitable condition; he is bound to maintain it in that condition throughout the term of the lease.

A dwelling is deemed not to be in good habitable condition and to be unfit for habitation if it is in such a condition as to seriously endanger the health or safety of its occupants or the public, or if it has been declared so by the court or by the competent governmental or municipal authority.

1971. A stipulation whereby a lessee acknowledges that the dwelling is in good habitable condition is null.

1972. The lessor is bound to deliver the dwelling in clean condition and the lessee is bound to keep it so.

Where the lessor makes repairs or improvements to the dwelling, he must restore it to clean condition.

1973. The lessor and the lessee are bound to comply with the obligations imposed on them by law, by regulation or by municipal or other by-law with respect to the safety and sanitation of dwellings.

The lessor is also bound to comply with the minimum requirements similarly imposed with respect to the maintenance, habitability, safety and sanitation of immovables comprising a dwelling.

Such obligations form part of the lease.

1974. A lessee may abandon the dwelling delivered to him if it is unfit for habitation; in such a case, the lease is resiliated of right.

The lessor is bound to repair the damage caused to the lessee if the lessee could not have become aware of the condition of the dwelling at the time that he leased it.

1975. The lessee may abandon the dwelling during the term of the lease 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.

1976. As soon as the dwelling becomes habitable 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 lessor may consider the lease resiliated and conclude a lease with a new lessee.

1977. The court, when seized of any dispute in connection with a lease, may, even of its own motion, declare that the dwelling is unfit for habitation; it may then rule on the rent, fix the conditions necessary for the protection of the rights of the lessee and, where applicable, order the dwelling restored to good habitable condition.

1978. 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 non-performance threatens to make the dwelling unfit for habitation or puts the safety of the occupants or of the public at risk.

1979. The lessee cannot, 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.

1980. The lessee cannot allow the overcrowding of a dwelling in contravention of the municipal or other by-laws respecting standards of occupation of dwellings.

1981. Upon the written application of the lessee, the lessor is bound to identify a dwelling in accordance with the Act to secure the handicapped in the exercise of their rights where a handicapped person significantly limited in his movements occupies the dwelling, whether or not that person is the lessee.

§ 5.—*Certain changes to a dwelling*

1982. No improvements or major repairs other than urgent repairs may be made in a dwelling without prior notice from the lessor to the lessee nor, if the temporary vacation of the lessee is necessary, until the lessor has offered an indemnity to him equal to the reasonable expenses he will have to incur by reason of the vacation.

1983. The notice given to the lessee must indicate the nature of the work, the date on which it is to begin, its duration and, where required, the necessary period of vacation; it must also indicate the amount of the indemnity offered, where applicable, and any other conditions under which the work will be carried out, if it is of such a nature as to substantially reduce the enjoyment of the premises.

The notice must be given at least ten days before the date on which the work is to begin or, if a period of vacation of more than one week is necessary, at least three months before that date.

1984. The indemnity due to a lessee by reason of temporary vacation is payable on the date he vacates.

If the indemnity proves inadequate, the lessee may be reimbursed for any reasonable expenses incurred beyond the amount of the indemnity.

1985. If the notice of the lessor provides for temporary vacation, the lessee must notify the lessor within ten days after receiving it that he intends or does not intend to comply with it; otherwise, he is deemed to have refused to vacate the premises.

If the lessee refuses to vacate, the lessor may apply to the court within ten days after the refusal for a ruling on the expediency of the vacation and, where applicable, the fixing of such conditions as it considers just and reasonable for the carrying out of the work.

1986. Where temporary vacation is not required or the lessee agrees to vacate, the lessee, within ten days after receiving the notice, may apply to the court for the modification or suppression of any harsh condition and the imposition of such conditions as it considers just and reasonable for the carrying out of the work.

1987. 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.

1988. Where the court is seized of an application respecting the conditions under which work is to be carried out, the lessor has the burden of proving that the conditions are reasonable.

The lessee cannot contest the nature and expediency of the work.

1989. No notice is required and no contestation is allowed where the alterations made have been the subject of an agreement between the lessor and the lessee within the scope of a public housing preservation and restoration programme.

§ 6.—*Access to and visit of the dwelling*

1990. Where a lessee gives notice of resiliation of the lease to the lessor or, after receiving notice of modification of a lease up for

renewal, refuses the proposed modification, he is bound to allow the dwelling to be visited and signs to be posted from the time he gives the required notice.

1991. The lessee may, except in case of urgency, refuse to allow the dwelling to be visited before 9 a.m. or after 9 p.m.; he may, in any case, refuse to allow the dwelling to be visited if the lessor or his representative is not present at the time of the visit.

1992. The lessee cannot refuse to allow the lessor to have access to the dwelling to make repairs.

He may deny him access before 7 a.m. or after 7 p.m., however, unless the repairs are urgent.

1993. 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 this obligation, the court may order him to allow the other party to have access to the dwelling.

1994. The lessor cannot prohibit a candidate in a provincial, federal, municipal or school election, an official delegate appointed by a national committee or the duly authorized representative of either from having access to the immovable or dwelling for the purposes of an election campaign or a legally constituted referendum.

§ 7.—*Right of maintenance in occupancy*

1 — Holders of the right

1995. Every lessee has a personal right of maintenance in occupancy and cannot be evicted from the leased dwelling, except in the cases provided for by law.

1996. The voluntary or judicial 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 the rights and obligations resulting from the lease towards the lessee.

1997. The spouse of a lessee or a person who has been living with a lessee for at least six months, being the concubinary, blood relative or relative by marriage of the lessee, is entitled to maintenance in

occupancy if he continues to occupy the dwelling after the cessation of cohabitation and gives notice to that effect to the lessor within two months after the cessation of cohabitation. He becomes the lessee from that moment.

A person living with the lessee at the time of death of the lessee has the same right and becomes the lessee if he continues to occupy the dwelling and gives notice to that effect to the lessor within two months after the death. If the person does not avail himself of this right, the liquidator of the succession or, failing him, an heir may resiliate the lease by giving notice of one month to that effect to the lessor.

1998. The sublessee of a dwelling or the lessee of a room is not entitled to maintenance in occupancy.

The sublease of a dwelling terminates on the date agreed by the parties. The lease of a room terminates on the same date as the lease of the dwelling in which it is situated, but the lessee is not required to leave the room before receiving notice of ten days to that effect from the lessor of the room or, if the lessor fails to give such notice, from the lessor of the dwelling.

1999. Neither the lessor nor any other person may harass a lessee who exercises his right of maintenance in occupancy in such a manner as to limit his right to peaceable enjoyment of the premises or to induce him to leave the dwelling.

A lessee who suffers harassment may apply to the court for an order to a lessor or other person who has harassed him to pay punitive damages.

II — Renewal and modification of the lease

2000. A lessee entitled to maintenance in occupancy and having a lease with a fixed term is entitled to its renewal of right 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 agree on a different renewal term.

2001. At the renewal of the lease, the lessor may modify its conditions, particularly the term or the rent, but only if he gives notice of the modification to the lessee not less than three months nor more than six months before term.

If the term of the lease is less than twelve months, the notice must be given not less than one month nor more than two months before term.

2002. A lessor cannot modify a lease with an indeterminate term unless he gives the lessee notice of three months.

The notice is of ten days in the case of the lease of a room.

2003. A notice of modification with a view to the increase of the rent must indicate the new proposed rent in dollars or the amount of the increase expressed in dollars or as a percentage of the current rent. The increase may be expressed as a percentage of the rent to be determined by the court, where an application for the fixing or review of the rent has been filed.

The notice must also indicate the proposed term of the lease where the lessor proposes to modify it.

2004. The lessor may avoid the renewal of the lease where the lessee has subleased the dwelling for more than twelve months by giving notice, of 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 the heir was not living with him at the time of the death, by giving the notice to the heir or to the liquidator of the succession.

2005. 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.

2006. A lessee may avoid the renewal of a lease with a fixed term or terminate a lease with an indeterminate term by giving notice of resiliation of the lease to the lessor, of the same time as for a lessor giving notice of modification.

III — Fixing of conditions of a lease

2007. Where a lessee objects to the proposed modification, the lessor may apply to the court, within one month after receiving the notice of objection, for the fixing of the rent or for a ruling on any other modification of the lease, as the case may be; otherwise, the lease is renewed of right on the same conditions as those of the initial lease.

2008. 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 end 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 decision, apply to the court for the fixing of a new rent.

2009. Where the lease provides for the adjustment of the rent, the parties may apply to the court to contest the excessive or inadequate nature of the proposed or agreed adjustment and for the fixing of the rent.

The lessee must apply within one month after receiving the notice of adjustment.

2010. A new lessee or a sublessee may apply to the court for a review of the rent if his rent is higher than the lowest rent paid during the twelve months preceding the beginning of the lease, unless that rent was fixed by the court.

The new lessee must apply within ten days after receiving the writing evidencing the lease. A sublessee or lessee who has not received the writing evidencing the lowest rent paid in the preceding year must apply within two months after the beginning of the lease; where the lessor has given the writing but it contains a false statement, the lessee or sublessee must apply within two months of becoming aware that the statement is false.

2011. A person entitled by law to become lessee and to maintenance in occupancy upon the cessation of cohabitation with the lessee or the death of the lessee is not considered to be a new lessee.

2012. Where the court authorizes the modification of a condition of a lease, it shall fix the rent payable for the dwelling, taking into consideration the relative value of the modification in relation to the rent for the dwelling.

2013. Where the court is seized of an application for the fixing or adjustment of rent, it shall, in fixing the rent payable, take into consideration the variations in costs for which an adjustment of rent may be applied for and such other standards as are prescribed by regulation.

The rent fixed by the court shall be in force for the term of the renewed lease or for such term, not in excess of twelve months, as it determines.

If the court grants an increase of rent, it may spread the payment of the arrears over a period not exceeding the term of the renewed lease.

2014. Where the rent has been revised on the application of a new lessee and the term of the lease exceeds twelve months, the court shall fix the rent for the term of the lease but the lessor may have it reviewed annually.

The application must be made three months before the expiry of each period of twelve months from the date on which the revised rent took effect.

2015. Neither the lessor nor the lessee of a dwelling erected pursuant to a plan for the elimination of slums and the construction of sanitary housing in the city of Montréal, or of a dwelling leased by a housing cooperative to one of its members may apply to the court for the fixing or review of the rent or 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 exercise the remedy referred to in the first paragraph within five years from the date on which the immovable is ready for its intended use.

The lease of such a dwelling must mention such restrictions and it cannot contain any clause for the adjustment of the rent.

2016. The lessor or the lessee of a dwelling in low-rental housing cannot apply for the fixing or review of the rent or any other condition of the lease except in accordance with the special provisions applicable to the lease of such dwellings.

The lease of a dwelling in low-rental housing cannot contain a clause for the adjustment of the rent.

IV — Retaking of possession of a dwelling and eviction

2017. Where the lessor of a dwelling is the owner, emphyteutic lessee or usufructuary of the immovable in which it is situated, he may retake possession of the dwelling as a residence for himself or for his ascendants or descendants in the first degree or for any other relative of whom he is the main support.

He may also retake the dwelling as a residence for his spouse, from whom he is separated or divorced, if he remains her main support.

2018. The owner of an undivided part of an immovable cannot retake possession of any dwelling in the immovable unless the only other owner is his spouse or his concubinary.

2019. The lessor of a dwelling may evict the lessee to divide the dwelling, enlarge it or change its destination.

2020. A lessor wishing to retake possession of a dwelling or to evict a lessee must give him notice at least six months before the expiry of the lease in the case of a lease with a fixed term; if the term of the lease is six months or less, the notice is of one month.

In the case of a lease with an indeterminate term, the notice must be given six months before the date of retaking of possession or eviction.

2021. A notice of retaking of possession must indicate, where applicable, the name of the beneficiary of the retaking of possession, the degree of relationship or the bond between the beneficiary and the lessor and the date fixed for retaking of possession.

A notice of eviction must indicate the reason for which eviction is requested and the date of eviction.

Notwithstanding the foregoing, the retaking of possession or the eviction may take effect on a later date upon the application of the lessee and with the permission of the court.

2022. Within one month after receiving notice of retaking of possession, the lessee shall 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.

2023. If the lessee refuses to vacate the dwelling, the lessor may retake possession of it with the permission of the court.

Application for permission must be made within one month after the refusal by the lessee; the lessor must show the court that he really intends to retake possession of the dwelling for the purpose mentioned in the notice and not as a pretext for other purposes.

2024. The lessor cannot, without the consent of the lessee, avail himself of the right to retake possession of the dwelling where he owns another dwelling that is vacant or offered for rent before the date fixed

for retaking of possession, and that is of the same type as that occupied by the lessee, situated in the same neighbourhood and at equivalent rent.

2025. Where the court gives permission to retake possession, it may impose such conditions as it considers just and reasonable, and, in particular, the requirement that the lessor pay an indemnity to the lessee equal to reasonable moving expenses.

2026. The lessee may recover damages resulting from the retaking of possession in bad faith, whether or not he has consented to it.

He may also apply for punitive damages against the person who has retaken possession in bad faith.

2027. Within one month after receiving notice of eviction, the lessee may bring an objection to the division, enlargement or change of destination of the dwelling; otherwise, he is deemed to have consented to vacate the premises.

Where an objection is brought, the burden is on the lessor to show that he really intends to divide, enlarge or change the destination of the dwelling and that he is permitted to do so by the law, the regulations and the municipal or other by-laws.

2028. The lessor must pay an indemnity equal to three months' rent and reasonable moving expenses to the evicted lessee. If the lessee considers that the damage 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 the vouchers.

2029. Where the lessor does not exercise his right of retaking possession 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 such a case, the lessor, within one month after the date fixed for retaking possession or eviction, may apply to the court for the fixing of a new rent.

The lease is also renewed where the court dismisses an application for the retaking of possession or eviction. The application for the fixing of the rent must in such a case be presented to the court within one month after the final decision.

2030. A dwelling that has been the subject of a retaking of possession, a change of destination or a division cannot, without the permission of the court, be leased or used for a purpose other than that for which the right was exercised.

If the court gives permission to lease the dwelling, it shall fix the rent.

§ 8.—*Termination of the lease*

2031. The lessor may obtain the termination of the lease if the lessee is over three weeks late in paying the rent or if he is frequently late in paying it or frequently deposits it at the office of the court without serious reason.

2032. The lessor or the lessee may apply for the termination of the lease if the dwelling becomes unfit for habitation.

2033. Where either of the parties applies for the termination of the lease, the court may grant it immediately or order the debtor to perform his obligations within the period it determines, except in the case of lateness in paying the rent.

Where the debtor does not comply with the decision of the court, the court shall terminate the lease on the application of the creditor.

2034. A lessee may terminate 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 terminate the current lease if he is admitted to a permit-holding reception centre, a foster home for the aged administered by an association that is a legal person or a dwelling erected pursuant to a plan for the elimination of slums and the construction of sanitary housing in the city of Montréal.

The termination takes effect when the dwelling is leased to a new lessee or, failing that, three months after the sending of 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 for a term of less than twelve months.

2035. The lease is terminated of right where a lessee abandons the dwelling without any reason, taking his movable effects with him, or where the dwelling is unfit for habitation and the lessee abandons it without notifying the lessor.

2036. An employer may terminate a lease that is accessory to a contract of employment by giving notice of one month to an employee who ceases to be in his employ, unless otherwise provided in the contract.

The employee may terminate such a lease upon the termination of the contract of employment by giving notice of one month to his employer, unless otherwise provided in the contract.

2037. The lessee, on termination of the lease or when he vacates the dwelling, must leave it free of all movable effects except those belonging to the lessor. If the lessee leaves movable effects at the end of the lease or after leaving the dwelling, the lessor may dispose of them as lost or forgotten objects.

§ 9.—*Special provisions respecting certain leases*

I — Lease with an educational institution

2038. Every student who leases a dwelling from an educational institution is entitled to maintenance in occupancy for any year during which he is enrolled in the institution as a regular full-time student and may exercise any remedy attached to that right.

To avail himself of his right, he must give notice of one month before the expiry of the lease that he intends to renew it.

The educational institution may, for serious reasons, relocate the student in a dwelling of the same type as that which he occupies, situated in the same neighbourhood and at equivalent rent.

2039. The student cannot sublease the dwelling or assign his lease.

2040. The educational institution may terminate the lease of a student who ceases to be a regular or full-time student at that institution. It must give him notice of one month and he may contest the notice on its merits.

2041. The lease of a student is terminated of right when the student ends his studies or ceases to be enrolled in the educational institution.

II — Lease of a dwelling in low-rental housing

2042. A dwelling situated in low-rental housing owned or administered by the Société d'habitation du Québec or by a legal person

whose operating expenses are met, in whole or in part, by a subsidy from the Société d'habitation du Québec, or a dwelling which is not so situated but the rent of which is fixed by by-law of the Société d'habitation du Québec is deemed to be 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 deemed to be 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 by the Société d'habitation du Québec.

2043. The lessor of a dwelling in low-rental housing must keep an up-to-date register of lease applications and an eligible list for the lease of a dwelling, in accordance with the by-laws of the Société d'habitation du Québec.

Where a dwelling is vacant, the lessor must offer it to a person entered on the eligible list in accordance with the criteria of allocation of dwellings established in the by-laws.

2044. 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. The lessor has the burden of proving that the criteria of acceptance or of eligibility have been respected.

The court may order the entry of the application in the register or of the name of the person on the eligible list, as the case may be.

2045. If the lessor allocates 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 after the dwelling was assigned for a review of the decision.

The lessor has the burden of proving that the criteria of allocation of dwellings have been respected; 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 allocate to him the next dwelling of that category that becomes vacant. The court may also, in case of urgency, particularly where the person is homeless, order the lessor to house him in an equivalent dwelling, whether in low-rental housing or not, corresponding to his needs. 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.

2046. A lessee in need of a dwelling other than the dwelling he occupies 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 allocates to him a dwelling of a category other than what he is entitled to, the lessee may apply to the court to contest his decision within one month after receiving notice of the refusal or the allocation of the dwelling.

2047. If the dwelling no longer suits the needs of the lessee, the lessor may relocate him, upon termination of the lease, in a dwelling of the category to which he is entitled, provided he gives notice of three months to that effect to the lessee.

The lessee may apply to the court for review of the decision within one month after receiving the notice.

2048. 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.

2049. A lessee, within one month after receiving a notice of modification of the term or of another condition of the lease, may apply to the court to obtain a ruling on the requested term or modification; otherwise, he is deemed to consent to the new conditions.

2050. 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.

2051. The lessee of a dwelling in low-rental housing cannot sublease his dwelling or transfer his lease.

He may resiliate the lease at any time by giving notice of three months to the lessor.

III — Lease of land intended for the installation of a mobile home

2052. 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 or by regulation, or by the municipal or other by-laws. These obligations form part of the lease.

2053. The lessor cannot require that he shall install or remove the mobile home of the lessee.

2054. The lessor cannot limit the right of the lessee of the land to replace his mobile home by another mobile home of his choice.

The lessor cannot limit the right of the lessee to alienate or lease his mobile home; nor can he require that he, the lessor, shall act as the mandatary or shall select the person to act as the mandatary of the lessee for the alienation or leasing of the mobile home.

A lessee who alienates his mobile home must, however, notify the lessor of the land immediately.

2055. The lessor cannot require any amount of money from the lessee by reason of the alienation or lease of the mobile home of the lessee, unless he acts pursuant to a written contract as the mandatary of the lessee for the alienation or lease of the mobile home.

2056. The acquirer of a mobile home situated on leased land has, towards the lessor, the rights and obligations resulting from the lease of the land, unless he notifies the lessor of his intention to leave the premises within one month after the acquisition.

CHAPTER V

AFFREIGHTMENT

SECTION I

GENERAL PROVISIONS

2057. Affreightment is a contract by which a shipowner, for remuneration called freight, undertakes to place all or part of a ship at the disposal of a 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.

2058. The charterer is bound to pay freight. If no freight has been agreed, he must pay an amount consistent with market conditions at the time and place of the contract.

2059. Where the shipowner has not been paid at the time of discharge of the cargo from the ship, he may retain the goods in his possession until payment of what is due to him, including payment of any reasonable expense and damage resulting from the retention. He cannot, however, retain the goods aboard his ship, but must place them in the hands of a third person and, subject to the rights of other creditors and unless the charterer furnishes a surety, the shipowner may cause them to be sold as though taking them in payment.

2060. General average is governed by conventional maritime rules and customs at the time and place of the contract.

2061. The charterer may sublet the ship with the consent of the shipowner or use it for carriage under bills of lading; in either case, he remains liable to the shipowner for his obligations under the contract of affreightment.

The shipowner 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 shipowner and the subcharterer.

2062. 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 goods or the event which put an end to the voyage.

Prescription of an action arising out of a contract for the subletting of a ship runs likewise.

SECTION II

SPECIAL RULES GOVERNING DIFFERENT CONTRACTS OF AFFREIGHTMENT

§ 1.—*Bareboat charter*

2063. A bareboat charter is a contract of affreightment by which a shipowner 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.

2064. The shipowner shall deliver the ship in a seaworthy condition and fit for the service for which it is intended, at the agreed place and time.

2065. The charterer may use the ship for any purpose for which it is intended, but the shipowner may stipulate restrictions as to the use of the ship.

2066. The charterer may use the ship's stores and equipment.

He shall insure the ship and bear all operating costs. He shall hire and maintain the crew.

2067. The charterer is bound to warrant the shipowner against all remedies of third persons arising out of the operation of the ship.

2068. The charterer is bound to maintain the ship and make the necessary repairs and replacements.

The shipowner 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.

2069. At the expiry of the contract, the charterer shall return the ship at the place where it was delivered and in the state in which it was delivered; he is not bound to indemnify the shipowner 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.

2070. Where the charterer returns the ship late, he shall pay to the shipowner an indemnity calculated, for the first fifteen days on the basis of the freight and, thereafter, on the basis of double the freight, unless the shipowner proves that he has suffered greater loss.

§ 2.—*Time charter*

2071. A time charter is a contract of affreightment by which a shipowner places a fully-equipped and manned ship at the disposal of a charterer for a determinate time and under which he retains the navigation and management of the ship but transfers its employment and agency to the charterer.

2072. The shipowner shall deliver the ship in a seaworthy condition and properly manned and equipped for the service for which it is intended, at the agreed place and time.

2073. The charterer bears the cost of the commercial operation of the ship, in particular dock dues, pilotage and canal dues.

He shall also pay for the fuel on board when the ship is delivered to him and thereafter provide and pay for fuel of such a grade as to ensure the proper working of the ship.

2074. 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 shipowner under the contract, the master may refuse to follow them. If he follows them, he does so without prejudice to the shipowner's remedy against the charterer.

2075. The charterer shall indemnify the shipowner for any loss or damage caused to the ship as a result of its commercial operation, fair wear and tear excepted.

2076. 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 shipowner; it is not payable, however, for periods during which the working of the ship is prevented by accident or by causes imputable to the shipowner.

2077. The charterer shall return the ship at the agreed place and within the agreed time; he shall give reasonable prior notice to the shipowner.

§ 3.—*Voyage charter*

2078. A voyage charter is a contract of affreightment by which a shipowner places all or part of a fully-equipped and manned ship at the disposal of a charterer for the carriage of cargo on one or more voyages and under which he retains the navigation, management, employment and agency of the ship.

The contract specifies the nature and quantity of the cargo as well as the place of loading and discharge and the time allowed for those operations.

2079. The shipowner shall present the ship in a seaworthy condition and properly manned and equipped for the voyage, at the agreed place and time.

Moreover, he is bound to maintain the ship in a seaworthy condition and to use all diligence within his means to prosecute the voyage.

2080. The shipowner is responsible, within the limits stipulated in the contract, for the goods received on board. If the goods are damaged, he may relieve himself from liability by proving that the damage did not result from failure on his part to perform his obligations.

2081. The charterer is bound to load cargo of the agreed quality in the agreed quantity; if he does not, he is nevertheless bound to pay the stipulated freight.

Notwithstanding the foregoing, the charterer may terminate the contract before loading begins; in that case, he shall pay to the shipowner an indemnity equal to the loss he suffers, but in no case greater than the amount of the freight.

2082. The charterer shall load and discharge the cargo within the time allowed by the contract or, failing such a stipulation, within a reasonable period or according to the custom of the port.

Where the periods for loading and discharging are fixed separately by the contract, they cannot be reversed and the time used for each operation is computed separately.

2083. The time for loading or discharging runs from the moment the shipowner notifies the charterer that the ship is ready to load or ready to discharge, after its arrival at port.

2084. Where the time allowed for loading or discharging is exceeded for any reason not imputable to the shipowner, the charterer shall pay demurrage from the expiry of the allowed time; demurrage shall be considered a supplement to freight and is payable for the entire additional time actually required for loading or discharging.

Demurrage not fixed by the contract shall be calculated at a reasonable rate, according to the custom of the port of loading or discharge or, failing that, according to general custom.

2085. 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 shipowner. In that case, freight is due only proportionately to the distance travelled.

2086. The contract is dissolved by operation of law, with no claim for damages on either part, if superior force prevents the voyage before its commencement.

Notwithstanding the foregoing, the contract stands if superior force prevents the sailing of the ship or the prosecution of the voyage for a time only; in that case, no reduction of freight or damages may be claimed by reason of the delay.

2087. Where the cargo is delivered by the shipowner to a person other than the charterer, the charterer is not bound to pay the sums due to the shipowner unless the latter, despite his diligence, is unable to obtain payment by exercising his right of retention.

CHAPTER VI

CARRIAGE

SECTION I

RULES APPLICABLE TO ALL MEANS OF TRANSPORTATION

§ 1.—*General provisions*

2088. A contract of carriage is one by which a carrier undertakes principally to carry a person or goods from one place to another, in return for a price which the passenger or the shipper or receiver of the property undertakes to pay at the agreed time.

2089. Gratuitous carriage of a person or goods is not governed by the rules contained in this chapter and the carrier is bound only to exercise prudence and diligence.

2090. A carrier who provides services to the general public shall carry any person who applies for passage and any goods 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.

2091. A carrier cannot exclude or limit his liability except to the extent and subject to the conditions established by law and approved by the competent authority.

He is liable in all events for damage resulting from delay, unless he proves interference of superior force.

2092. Where the carrier entrusts another person with the performance of all or part of his obligation, the substitute carrier is deemed to be a party to the contract.

2093. In the case of successive or combined carriage by several carriers, each carrier who accepts passengers, luggage or goods is deemed to be a party to the contract of carriage as far as the part of the carriage he effects is concerned, unless one of the carriers has, by express stipulation, assumed liability for the entire journey.

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.

2094. In the case of substitution of the carrier or successive or combined carriage, the carrier with whom the contract was made or the delivering carrier is bound to compensate any loss which occurs during carriage, without prejudice to his remedy against any other carrier who may have caused the loss.

However, the carrier chosen by the shipper is alone liable to him.

§ 2.—*Carriage of persons*

2095. Carriage of persons includes, in addition to carriage proper, embarking and disembarking operations.

2096. The carrier is bound to carry his passengers safe and sound to their destination.

The carrier is bound to compensate any loss or damage suffered by a passenger unless he proves it was caused by superior force or by the state of health or fault of the passenger. Even in the case of superior force, the carrier is bound to provide compensation where the loss or damage is caused by his state of health or that of one of his servants or by the condition or working of the vehicle.

2097. The carrier is liable for any loss or deterioration of the luggage or other effects placed in his care by a passenger, unless he proves interference of superior force, an inherent defect in the property or the fault of the passenger.

However, the carrier is not liable for any loss or deterioration of documents, specie or other property of extraordinary 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 or deterioration of hand luggage or other effects which remain in the care of the passenger, unless the latter proves the fault of the carrier.

2098. In the case of successive or combined carriage of persons, the carrier who effects the carriage during which the loss or deterioration occurs is liable therefor, unless one of the carriers has, by express stipulation, assumed liability for the entire journey.

§ 3.—*Carriage of goods*

2099. Carriage of goods extends from the time the carrier receives the goods into his charge for carriage until their delivery.

2100. A contract for the carriage of goods shall be evidenced in writing, by way of a bill of lading issued by the carrier and signed by him and the shipper.

2101. The bill of lading shall state the names of the shipper, receiver and carrier and, where such is the case, of the person who is to pay the price of carriage or freight. It shall also state the place and date of receipt of the goods 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 goods and any dangerous properties they may have.

2102. The bill of lading shall be issued in several copies; the issuing carrier shall keep a copy and give a signed copy to the shipper; another copy must accompany the goods to their destination.

In the absence of any evidence to the contrary, the bill of lading is proof of the receipt of the goods by the carrier into his charge and of their nature, quantity and apparent condition.

2103. 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.

2104. The carrier is bound to deliver the goods to the receiver or, in the case of a negotiable bill of lading, to its holder.

The holder of a negotiable bill of lading must hand it over to the carrier when he demands delivery of the goods.

2105. Subject to the rights of the shipper, the receiver upon accepting the goods or the contract acquires the rights and assumes the obligations arising out of the contract.

2106. Where, either under the contract or because of any act of the receiver, the goods are not delivered to his residence or place of business, the carrier is bound to notify him of the arrival of the goods and of the time allowed for removal.

2107. Where the receiver cannot be found or refuses or neglects to take delivery of the goods or where, for any other reason, the carrier cannot deliver the goods through no fault of his own, the carrier shall notify the shipper without delay and request instructions as to disposal of the goods; in an emergency, however, the carrier may dispose of perishable goods without notice.

If the carrier receives no instructions within ten days of notification, he may return the goods to the shipper at the shipper's expense or dispose of them as though they were lost or forgotten.

2108. 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 goods, payable by the receiver or, if not, by the shipper.

2109. The carrier is bound to carry the goods to their destination without loss or deterioration.

He is bound to compensate any damage resulting from the carriage, unless he proves that it was caused by superior force, an inherent defect in the goods or natural shrinkage.

2110. Prescription of any action in damages against a carrier runs from the delivery of the goods or from the date on which they should have been delivered.

Notwithstanding the foregoing, notice of the claim must be given to the carrier in writing within ninety days after the delivery of the goods or within one hundred and eighty days after the date on which they should have been delivered, whether or not the loss or deterioration is apparent. No notice is required if the action is brought within that time.

2111. The liability of the carrier cannot exceed the value of the goods, as declared by the shipper.

If no value has been declared, it shall be established on the basis of the value of the goods at the place and time of shipment.

2112. No carrier is bound to carry documents, specie or goods of extraordinary value.

If a carrier agrees to carry such property, he is not liable for loss or deterioration 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.

2113. A shipper who places dangerous goods into the charge of a carrier without prior disclosure of their exact nature shall indemnify the carrier for any loss he suffers by reason of carriage of the goods.

Moreover, the shipper shall pay any storage charges and he assumes all risks.

2114. The shipper is bound to compensate any loss suffered by the carrier as a result of an inherent defect in the goods or any omission, deficiency or inaccuracy in the shipper's declarations as to the goods.

However, the carrier is liable to third persons for any loss they suffer from such causes.

2115. Carriage charges are payable before delivery, unless otherwise stipulated in the bill of lading.

In either case, if the goods are not as described in the contract or if their value is greater than the declared amount, the carrier may claim the amount he could have charged for their carriage.

2116. Where the goods carried are payable on delivery, the carrier shall not deliver them until he receives payment.

Unless the shipper has otherwise instructed on the bill of lading, the charges for collecting payment are paid by the receiver.

2117. The carrier may retain the goods carried until the freight, the carriage charges and any reasonable storage charges are paid.

If, according to the shipper's instructions, those amounts are payable by the receiver and the carrier does not demand payment according to instructions, he loses his right to claim payment from the shipper.

SECTION II

SPECIAL RULES GOVERNING CARRIAGE OF GOODS BY WATER

§ 1.—*General provisions*

2118. This section applies to carriage of goods by water to or from a port situated in Québec, to the extent that the carriage is not subject to an international convention to which Canada is a party or to the Carriage of Goods by Water Act (R.S.C., 1970, chapter C-15); it also applies to carriage operations not within the scope of those conventions or that Act.

2119. Carriage of goods extends from the time the carrier receives the goods into his charge until their delivery.

§ 2.—*Obligations of parties*

2120. Freight is payable by the shipper.

Freight is also payable by the receiver where he takes delivery of goods in respect of which freight is payable on arrival.

2121. The shipper shall present the goods 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.

2122. Before and at the beginning of the voyage, the carrier is bound to exercise due diligence to make the ship seaworthy, properly man, equip and supply it, and make fit and safe the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried.

2123. The carrier is bound to properly load, handle, stow, carry, keep and discharge the goods 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 goods on deck. Consent is presumed, however, where containers are loaded on a ship fitted for the carriage of containers.

2124. The carrier shall issue to the shipper at his request a bill of lading based on the declarations of the shipper.

In addition to the usual particulars, the bill of lading must contain entries clearly identifying the goods to be carried, including the leading marks appearing on them, and any information relevant to their carriage.

The carrier may refuse to include in the bill of lading any particular the accuracy of which he has reasonable ground for suspecting or which he has had no reasonable means of checking.

2125. The shipper shall be considered to have guaranteed to the carrier the accuracy at the time of shipment of his declarations and is liable for any loss the carrier may suffer as a result of inaccuracies in his declarations.

The carrier may exercise his rights under this article against no other than the shipper.

2126. Where the nature or value of the goods is knowingly misstated by the shipper, the carrier is not liable for any loss or deterioration.

2127. Removal of the goods shall be *prima facie* evidence of delivery of the goods 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 or deterioration of the goods or of any loss he has suffered, not later than upon removal or, if the loss or deterioration is not apparent, not later than three days after removal.

The carrier and the receiver may, at the time of removal, require a joint survey or inspection as to the condition of the goods.

2128. In the case of any loss or deterioration of the goods or of any actual or apprehended loss, the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

2129. Any stipulation in a contract whereby the carrier or the shipowner is relieved from liability for any loss or deterioration of the goods carried, except in the case of carriage of live animals or goods stowed on deck other than containers loaded on a ship fitted for the carriage of containers, is null.

Any clause assigning the benefit of insurance to the carrier or any similar clause shall be considered to be a stipulation relieving the carrier from liability.

2130. The carrier is liable for any loss or deterioration sustained by the goods from the time he receives them into his charge until their delivery.

He is liable, in particular, for any loss or deterioration resulting from unseaworthiness unless he proves that he exercised due diligence to make the ship seaworthy.

2131. The carrier is not liable for any loss or deterioration of the goods 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 goods or shipper, particularly in packing or marking the goods;

(5) an inherent defect in the goods or natural shrinkage;

(6) saving or attempting to save life or property in the course of a voyage or a deviation for that purpose.

2132. The shipper is not liable for any loss suffered by the carrier or for any damage caused to the ship by superior force.

2133. The carrier is liable for the loss or deterioration of the goods carried up to the amount fixed by government regulation, unless a higher indemnity has been fixed by agreement between him and the shipper.

He may be held liable beyond the amount fixed by regulation if he committed fraud or if the nature and value of the goods were declared by the shipper before shipment and inserted in the bill of lading. The shipper's declaration is binding on the carrier, unless it is proved inaccurate by him.

2134. No freight is payable in respect of goods lost by reason of perils of the sea or the carrier's failure to make the ship seaworthy.

2135. The carrier may land, destroy or render innocuous any goods of an inflammable, explosive or dangerous nature if he would not have consented to their shipment had he been aware of their nature or properties.

The shipper of such goods is liable for any loss resulting from their shipment and for any expense incurred by the carrier to dispose of them or render them innocuous.

2136. Where dangerous goods shipped with the knowledge and consent of the carrier become a danger to the ship or cargo, they may be landed, destroyed or rendered innocuous by the carrier without any liability on his part except to general average, if any.

2137. The contract is dissolved 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.

2138. Any action against the carrier, shipper or receiver under a contract of carriage is prescribed one year after the delivery of the goods or, in the case of total loss, one year after the date they should have been delivered.

§ 3.—*Handling of goods*

2139. 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 goods as declared by the depositor.

2140. The handling contractor acts for the account of the person who hired his services and is liable only to him.

2141. The handling contractor may be called upon to receive, tally and keep goods on land until loading, for the account of the carrier, shipper or receiver; he may likewise be called upon to receive, tally and keep goods on land after their discharge as well as to deliver them.

Those additional services are due if they have been agreed or if they are consistent with the custom of the port.

2142. The handling contractor may relieve himself from liability for the loss or deterioration of goods in the same circumstances as the carrier may, where applicable; however, the plaintiff may in those cases establish that the loss or deterioration is due to the fault of the handling contractor or his servants.

The liability of the handling contractor cannot exceed the amount fixed by government regulation, unless he has been notified of a declaration of the value of the goods.

2143. Any clause for the purpose or to the effect of relieving the handling contractor from liability, shifting the burden of proof to the other party, limiting his liability to an amount lower than that fixed by regulation or assigning the benefit of insurance to him cannot be set up against the shipper or the receiver.

CHAPTER VII

CONTRACT OF EMPLOYMENT

2144. A contract of employment is a contract whereby a person, the employee, undertakes to do work of a physical or intellectual nature for remuneration, according to the instructions and under the direction or control of another person, the employer.

A contract of employment is for a fixed term or an indeterminate term.

2145. The employer is bound not only to furnish the work agreed upon and to pay the remuneration fixed, but also to take all measures consistent with the nature of the work to protect the life and dignity of the employee and the integrity of his person.

2146. The employee is bound not only to carry on his work with prudence and diligence, but also to act faithfully and honestly and not to use, in any manner that may be damaging to the employer, any information or commercial secrets he may obtain in carrying on or in the course of his work.

2147. The parties may stipulate in writing and in express terms that, even after the termination of the contract, the employee shall neither compete with his employer in his own name nor participate in any quality whatsoever in an enterprise which would then compete with him.

2148. The stipulation of non-competition is null or the obligations arising from it may be reduced if it is harsh, particularly if the limitations as to time, place and kind of employment unduly affect the earning capacity of the employee or are unnecessary for the protection of the legitimate interests of the employer.

The burden of proof that the stipulation is not harsh is on the employer.

2149. The contract of employment of an employee who, although no new term has been fixed, continues his work for five days after the expiry of the term, without objection from the employer, is tacitly renewed for one year, or for the original term if it was less than one year.

The contract so renewed is for a fixed term and may also be tacitly renewed for the same term.

2150. Where the contract is for an indeterminate term, either party may terminate it by giving notice of termination to the other party.

The notice of termination must be of a reasonable time, taking into account the nature of the employment, the special circumstances in which it is carried on and the duration of the period of service.

2151. A contract of employment terminates upon the death of the employee.

A contract of employment may also terminate in certain circumstances upon the total disability of the employee or the death or disability of the employer; the employee is then entitled to his remuneration in the same manner as if he had received notice of termination.

2152. One of the parties may, for a serious reason, unilaterally terminate the contract of employment without prior notice.

2153. Where insufficient notice of termination is given and the manner of termination is harsh, the employee is entitled to compensation for the damage he suffers; computation of the compensation shall take into account, in particular, the duration of the period of service.

The employee cannot renounce his right to compensation.

2154. An employer cannot avail himself of a stipulation of non-competition if he has terminated the contract without a serious reason or if he has himself given the employee a serious reason for terminating the contract.

2155. 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 the name and address of the employer.

2156. A contract of employment is not terminated as a result of the alienation, transfer or conveyance of all or part of the undertaking, or of any change in its legal structure by way of amalgamation or otherwise.

The contract binds the representative or successor of the employer.

2157. A contract of employment may be supplemented by an order or decree, ordinance, regulation or collective agreement.

CHAPTER VIII

CONTRACT FOR WORK

SECTION I

NATURE AND SCOPE OF THE CONTRACT

2158. A contract for work is a contract whereby a person, either a contractor or a supplier of services, called the professional, binds himself to do a specific job of work for another person, the customer, by either producing a work or furnishing a service, for a price which the customer binds himself to pay.

2159. The professional is free to choose the means of doing the work; although no relationship of subordination exists between the professional and the customer in respect of such performance, the professional is bound to take the interests of his customer into consideration.

The professional is bound to comply with the instructions of the customer as regards the performance of the work only to the extent that he so agreed at the time of formation of the contract.

2160. The work is either physical or intellectual.

Where the work is mainly physical, the professional is bound to perform it in accordance with usual practice and the rules of art, and to warrant that the work is in conformity with the contract. He cannot be exonerated from liability except by proving superior force.

Where the work is mainly intellectual, the professional is bound to act in the best interests of his customer, with prudence, diligence and competence; he is liable only if he commits a fault in performing the contract.

SECTION II

RIGHTS AND OBLIGATIONS OF THE PARTIES

§ 1.—*General provisions applicable to both services and works*

2161. The professional is bound to perform the contract in person.

He may employ persons to assist him in the performance of the contract, unless it has been concluded specifically in view of his personal competence, or unless its very nature prevents it; where the professional requires such assistance, the performance of the contract remains nevertheless under his supervision and responsibility.

2162. Before the conclusion of the contract, the professional is bound to provide the customer with all the necessary or expedient information relating to the contract, particularly as to the nature of the work, the work to be carried out for the production of the work or for the provision of the service, the property required for that purpose and the time necessary for the performance of the contract.

The professional shall also inform the customer of the provisions of this chapter respecting his right to withhold a sufficient amount from the price of the contract to discharge certain debts, and of the provisions respecting trusts created in the hands of the customer or of the professional.

The professional has the burden of proving that he has adequately provided the required information. •

2163. Where usual practice or the contract provides therefor, the professional is bound to furnish the customer with plans and specifications or to indicate to him the place where those documents may be consulted or where he has performed similar work.

2164. The professional shall furnish the property necessary for the performance of the contract, unless the parties have stipulated that only his work is required.

Notwithstanding the foregoing, where the work or the service is only of secondary importance in relation to the value of the property furnished, the contract is a contract of sale and not a contract for work.

2165. The property to be furnished by the professional for the performance of the contract must be of good quality. The professional is bound by the same warranties in respect of the property as a seller.

2166. Where the property is provided by the customer, the professional is bound to use it with care and to account for its use; where it is defective, the professional is bound to inform the customer immediately, failing which he is liable for any damage which may result from its use.

2167. If the property perishes by superior force, the party that furnished it bears the loss.

2168. The professional is liable for loss or deterioration of the work occurring before its delivery, unless it is due to the fault of the customer or the customer is in default of receiving the work.

Where the property is furnished by the customer, the professional is not liable for the loss or deterioration unless it is due to his fault. He cannot claim the price of his work except where the loss or deterioration of the work results from an inherent defect or is due to the fault of the customer.

2169. The price of the work shall be fixed by the contract or by law.

Where the price cannot be fixed according to the first paragraph, it shall be determined by taking into account, in addition to reasonable expenses of the professional, the value of the work performed, the property furnished by the professional and the time he would normally require for the performance of the contract.

2170. The customer shall, on demand, pay advances to the professional for any expenses necessary for the performance of the contract.

The customer is not bound to pay the price of the contract before it is performed.

2171. Where an approximate price is agreed at the time of the conclusion of the contract, the final price cannot exceed the approximation thus made by more than ten per cent.

The professional shall give the reasons for any expenses additional to the approximate price, and the customer shall pay such expenses only to the extent that they result from work that the professional could not reasonably foresee at the time of the conclusion of the contract.

2172. Where the price is fixed or determined according to the value of the work necessarily performed or of the property furnished,

the professional is bound, at the request of the customer, to give him an account of the progress of the work and of the expenses incurred so far.

Where the request is frivolous or repetitious, the professional may refuse to comply with it.

2173. Where the price is fixed by the contract, the customer shall pay the price so agreed, and cannot claim a reduction of the price on the ground that the work required less effort or cost less than had been foreseen.

Similarly, the professional cannot claim an increase of the price for the opposite reason.

Unless otherwise agreed by the parties, the price fixed by the contract remains unchanged notwithstanding any modification of the original terms and conditions of performance.

2174. Persons assisting in the performance of a contract are entitled to demand payment of their claims from the customer up to the amount which he owes to the professional at the time the customer is notified of their demand.

§ 2.—*Special provisions respecting physical work*

I – General Provisions

2175. The customer is bound to accept the work when it is substantially completed and ready to be used for the agreed purpose.

The customer is then bound to pay the price, but he is entitled to withhold that part of it corresponding to the work to be completed and to the defects and poor workmanship existing at the time of acceptance of the work.

2176. Acceptance of the work is the act by which the customer declares that he accepts it, with or without reservation. Nevertheless, the customer retains his right to pursue his remedies against the professional in cases of defects or poor workmanship.

2177. The customer is not bound to pay the price before the work is accepted.

Where the work is performed in successive phases, it may be accepted in parts; the price for each part is payable upon delivery and

acceptance of the part; payment creates a presumption that the part has been accepted, unless the sums paid must be considered merely as partial payments on the price.

2178. The professional is bound to indicate in the contract the extent and duration of the warranty he offers and, as the case may be, of the warranty by which he is bound by law.

2179. The prescription of rights to pursue remedies among the parties begins to run only from the final acceptance of the work.

II – Complex Movable or Immovable Works

2180. Where a professional undertakes the construction or renovation of an immovable or the production of a complex movable property, the contract shall be construed restrictively, as regards the importance of the work, if the work to be performed has been determined in only a general manner.

Where the work is specified by means of plans and specifications, the professional is bound to comply with them.

2181. Where, for technical reasons, alterations to the work as agreed become necessary, the professional is bound to notify the customer, except in case of urgency.

2182. The customer may, at any time, provided he does not interfere with the work, 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.

2183. The professional is responsible for any loss or deterioration of the work occurring within five years of acceptance, where the loss or deterioration results from faulty design, construction or manufacture of the work, or defects in the ground.

2184. The professional is bound to warrant final completion of the work for one year from acceptance.

He is also bound to warrant against poor workmanship existing at the time of acceptance or discovered within one year therefrom.

2185. The subcontractor, the architect, the engineer or any other assisting person who designs, directs or supervises the production of the work or part of it and, in the case of an immovable, the promoter

who sells the work which he has built or caused to be built, after its completion, are solidarily bound with the professional by the warranty as if they were parties to the contract.

Each person may, nevertheless, exonerate himself from the responsibility by proving superior force or by establishing that the defects or the poor workmanship in the work, or in the part of it that he produced, do not result from any erroneous or faulty expert opinion or plan he may have submitted or from any failure to fulfil his obligation to direct, supervise or perform the work.

These rules apply notwithstanding any contrary provision.

2186. During the performance of the work, the professional cannot require partial payments on the price of the contract in excess of the value of the work performed and of the materials forming part of the work; before doing so, he is bound to furnish the customer with a general statement of the amounts paid to the subcontractors, suppliers of materials and other persons participating in the work, and of the amounts he still owes them for the completion of the contract.

2187. At the time of payment, the customer may deduct from the price of the contract an amount sufficient to pay the claims of the subcontractors, suppliers of materials and other persons who may exercise a legal hypothec on the property and who have given him notice of their contract with the professional, in respect of the work performed or the materials supplied after such notice was given.

The deduction is valid until such time as the professional furnishes the customer with a discharge or renunciation of legal hypothec signed by those persons.

2188. Until the warranty of full completion of the work expires or until the repairs are made to the work, where necessary, the customer may deduct a sufficient amount to meet the reservations which he made when accepting the work or subsequently. He shall deposit the deducted amount in trust.

The customer cannot exercise this right if the professional furnishes him with sufficient security to guarantee the performance of his obligations.

III – Residential works

2189. All sums allocated by the customer to the construction of a residential immovable, or to the renovation of such an immovable

where the price of the contract exceeds $3 000, shall be held in trust by him for the benefit of the professional.

All sums paid by the customer to the professional for the production of the work, except those representing the price of the work of the professional, shall be held in trust by the professional, upon such payment, for the benefit of the subcontractors, suppliers of materials and other persons participating in the construction or renovation of the residential immovable.

2190. The professional may withdraw the sums held in trust thirty days after furnishing the customer with a certificate guaranteeing the performance of his obligations or thirty days after furnishing a certificate evidencing the substantial completion of the work, where the persons who participated in the construction or renovation of the residential immovable have not registered any legal hypothec against the immovable.

2191. At the request of an interested person, the court may terminate any trust created in the hands of a customer or professional where its purposes have not been achieved or are seriously endangered and, in particular, where the professional stops the work without serious reason or is declared bankrupt, or where one of the subcontractors impedes the performance of other work.

2192. At the same time, the court may also appoint an administrator responsible for completing the production of the work, and order the transfer of the sums held in trust to him. The judgment must be entered in the land register.

2193. The administrator appointed by the court shall act as the administrator of the property of others responsible for full administration of the property. He is bound to take all appropriate measures to preserve what has been done, to complete the production of the work and to protect the interests of the beneficiaries of the administration, namely, the customer, the professional, or the other persons having participated in the work so far.

2194. After taking possession of the property and obtaining a statement of accounts, the administrator shall propose and submit for approval to the beneficiaries appropriate measures to ensure the complete production of the work.

Where the approval of the beneficiaries cannot be obtained, the administrator may apply to the court for approval of the proposed measures.

2195. Thirty days after production of the work, the administrator is bound to return the residential immovable to the customer or, where he cannot accept it, to dispose of it, subject to any hypothec charging it and to any other conditions determined by the court.

SECTION III

TERMINATION OF THE CONTRACT

2196. The customer may unilaterally terminate the contract even though the work is already in progress.

2197. Where the customer terminates the contract, he is bound to indemnify the professional for his actual costs and expenses, the value of the work performed before the notice of termination and the value of the property furnished so far.

The customer is also liable for payment of damages to the professional, according to the circumstances, particularly in consideration of the amount the professional could have earned in the performance of the contract.

2198. The professional cannot terminate the contract unilaterally except for a serious reason, and never at an inopportune moment; otherwise, he is bound to repair the damage caused to the customer as a result of the termination.

Where the professional cancels the contract, he is bound to do all that is immediately necessary to prevent any loss or deterioration and, in case of urgency, he shall see to it that the work is continued.

2199. The death of the customer does not terminate the contract unless its performance thereby becomes impossible or useless.

2200. The contract is not terminated by the death or disability of the professional, unless it has been concluded specifically in view of his personal competence or cannot be adequately continued by his successor, in which case the customer may terminate it.

2201. Upon the termination of the contract, the customer is bound to pay to the professional, 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 termination 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 professional shall repay any advances he has received in excess of what he has earned.

CHAPTER IX

MANDATE

SECTION I

NATURE AND SCOPE OF MANDATE

2202. 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, as the case may be, the writing evidencing it are called the power of attorney.

2203. 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.

Unless the mandatary immediately refuses or expresses reservations, he is deemed to accept the mandate if it is related to an act connected with his official quality or inherent in the practice of his profession or for which he has publicly offered his services.

2204. Mandate is either gratuitous or by onerous title.

A mandate concluded between two natural persons is presumed to be gratuitous in the absence of any agreement or usage to the contrary, but a business mandate or a mandate given to a professional is presumed to be given by onerous title, although the remuneration may be paid by a third person.

2205. Remuneration, if any, is determined by the contract, law or usage. Failing that, it is determined on the basis of the value of the services rendered, the time normally required for providing such services, and reasonable costs.

2206. A mandate may be special, that is, for a particular act, or general.

A mandate expressed in general terms may include all the affairs of the mandator, but it confers the power to perform acts of simple administration only. In order to confer the power to perform other acts, it must be express.

2207. The powers of a mandatary extend not only to what is expressed in the power of attorney, but also to anything that may be inferred therefrom. The mandatary may do all acts which are incidental to such powers and which are necessary for the performance of the mandate.

2208. Every mandatary who exercises alone powers that his mandate requires him to exercise with another person is deemed to exceed his powers, unless he exercises them more advantageously for the mandator than agreed.

2209. Powers granted to persons of a certain profession or calling to do anything in the ordinary course of the business which they follow need not be specified; they are inferred from the nature of such profession or calling.

SECTION II

MUTUAL OBLIGATIONS OF THE PARTIES

§ 1.—*Obligations of the mandatary towards the mandator*

2210. A mandatary is bound to fulfill the mandate he has accepted, and he must act with prudence, diligence and competence in performing it.

He shall act honestly and faithfully in the best interests of the mandator, and avoid placing himself in a position that puts his own interest in conflict with that of his mandator.

2211. 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 and, if necessary, to advise him adequately.

The mandatary shall inform the mandator without delay that he has fulfilled his mandate.

2212. The mandatary is bound to fulfill the mandate in person unless he is expressly or tacitly 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 of the circumstances in due time.

2213. 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.

2214. 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.

2215. A mandatary who agrees to represent, in the same act, persons whose interests conflict or could conflict must so inform each of the mandators, unless he is exempted by usage or the fact that each of the mandators is aware of the double mandate; he shall act impartially towards each of them.

Where a person was unaware of the double mandate, in circumstances preventing him from being aware of it, he may have the act of the mandatary declared null if he suffers damage as a result.

2216. 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.

2217. The mandatary cannot, in the performance of his mandate, use for his benefit any information obtained or property received or administered by reason of his mandate, unless the mandator consents to such use or such use arises from the law or the mandate.

The mandatary shall compensate the mandator for use without consent by paying, in the case of information, an amount equal to the enrichment or, in the case of property, an appropriate rent or the interest on the money used.

2218. The mandatary cannot, even through a third person, 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.

2219. During the mandate, the mandatary is bound, at the request of the mandator or where circumstances so warrant, to render a summary account of his administration to the mandator.

2220. The mandatary shall repair any damage he causes to the mandator by his failure to perform any of his obligations. Where the mandate is gratuitous, he is responsible only if he has failed to exercise the same degree of care in the affairs of the mandator as he does in his own affairs.

§ 2.—*Obligations of the mandator towards the mandatary*

2221. The mandator is bound to cooperate with the mandatary to favour the fulfilment of the mandate.

2222. Where required, the mandator shall advance to the mandatary the necessary sums for the performance of the mandate. He is bound to reimburse the mandatary for any reasonable expenses he has advanced for the performance of the mandate, and to pay him the remuneration to which he is entitled.

2223. The mandator owes interest on advances made by the mandatary in the performance of his mandate from the day they are made.

2224. 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 the latter is not empowered to perform or which exceeds the limits of the mandate. He is fully liable, however, if he ratifies the act performed by the mandatary.

2225. The mandator is deemed to have ratified the act which the mandatary was not empowered to perform or which exceeds the limits of the mandate where the act has been performed more advantageously for the mandator than he had indicated.

2226. Where good faith so requires, the mandator is bound to ratify the act of the mandatary where the latter has departed from the instructions he had received.

The mandatary cannot demand such ratification if he could have requested the authorization of the mandator before acting or if he neglected to inform him immediately after acting.

2227. All acts, performed by a mandatary who is unaware that the mandate has terminated are valid and have the same effects as if they had been ratified.

2228. Where the mandatary is not at fault, the mandator shall compensate him for the damage he has suffered by reason of the performance of the mandate.

2229. If no fault is imputable to the mandatary, the sums owed to him must be paid even though the business has not been successfully concluded.

2230. If a mandate is given by several persons, their obligations towards the mandatary are solidary.

SECTION III

OBLIGATIONS OF THE PARTIES TOWARDS THIRD PERSONS

§ 1.—*Obligations of the mandatary towards third persons*

2231. 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 concludes the contract.

The mandatary is liable to the third person if he binds himself in his own name, without prejudice, in either case, to any rights the third person may have against the mandator.

2232. Where a mandatary exceeds his powers, he is personally liable to the third person with whom he enters into the contract, unless the third person was sufficiently aware of the extent of the powers, or unless the mandator has expressly or tacitly ratified the obligations contracted by the mandatary.

2233. Where the mandatary agrees with a third person to disclose the identity of his mandator within a fixed period and fails to do so, he is personally bound.

The mandatary is also personally bound if he is bound to conceal the name of the mandator or if the person whose identity he discloses is insolvent, is a minor or is under protective supervision or, in the case of a business mandate, if the mandator is domiciled outside Québec.

§ 2.—*Obligations of the mandator towards third persons*

2234. A mandator is liable to third persons for the acts done by the mandatary in the performance and within the limits of his mandate unless, under the agreement or by virtue of the usage of trade, the mandatary alone is liable.

The mandator is also liable for any acts which exceed the limits of the mandate, if he has ratified them expressly or tacitly.

2235. The mandator may repudiate the acts of the person appointed by the mandatary as his substitute if he suffers any damage thereby, where the appointment has been made without his authorization or where his interest or the circumstances did not warrant the appointment.

2236. 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 a necessary consequence of those already performed or could not be deferred without risk of loss, or where the third persons were unaware of the termination of the mandate.

2237. A person is liable to a third person who concludes a contract, in good faith, with another person he erroneously believes to be his mandatary, if the first person has given reasonable cause for such belief or has not taken reasonable measures to prevent the error of the third person which, under the circumstances, was foreseeable.

2238. A mandator is responsible for any damage caused by the fault of the mandatary in the performance of the mandate unless he proves, where the mandatary was not his servant, that he could not have prevented the damage by any reasonable means.

2239. A mandator, after revealing 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 terms or nature of his contract and the defenses which can be set up against the mandator and the mandatary, respectively.

If proceedings have already been instituted against the third person by the mandatary, the mandator may exercise his right only by intervening in the proceedings.

SECTION IV

TERMINATION OF MANDATE

2240. In addition to the causes of extinction common to obligations, revocation of the mandate by the mandator, renunciation by the mandatary or the extinction of the power conferred on the mandatary terminates the mandate.

The mandate is also terminated upon the death or bankruptcy of one of the parties or upon his being placed under protective supervision.

2241. The mandator may, at his discretion, revoke the mandate and compel the mandatary to return to him the original or a copy of the power of attorney, if it is recorded in a notarial deed *en minute*, in order to note the termination of the mandate in the margin.

The mandatary has a right to require the mandator to furnish him with a duplicate of the power of attorney containing the note of termination of the mandate.

Where the power of attorney is *en minute*, the mandator may also give notice of termination of the mandate to the depositary of the document, who, on being notified, is bound to note it in the margin of the document and of every copy of it which he issues.

2242. A mandatary may renounce the mandate he has accepted by so notifying the mandator. He is thereupon entitled, as the case may be, to the remuneration he has earned until the day of his renunciation

or to the value of the services he has rendered, if the mandate was given by onerous title.

The mandatary is liable for any damage caused to the mandator by his renunciation, if he submits it without a serious reason and at an inopportune moment.

2243. The mandator may, for a fixed period 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.

2244. 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, in the absence of any agreement or usage to the contrary.

2245. A mandator who revokes a mandate remains bound to perform his obligations towards the mandatary and, in particular, to pay to him the actual costs and expenses, the value of any services rendered before the revocation, and any damages resulting from a revocation made without a serious reason and at an inopportune moment.

Where notice of the revocation has been given only to the mandatary, the revocation cannot affect a third person who deals with him while unaware of the revocation, without prejudice, however, to the remedy of the mandator against the mandatary.

2246. 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.

2247. 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.

2248. At the termination of the mandate, the mandatary is bound to render an account and return to the mandator everything he has received in the performance of his duties, even if what he has received was not due to the mandator.

The mandatary owes interest, computed from the time he is put in default, on any balance in the account consisting of sums he has received.

2249. 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 by reason of his mandate.

CHAPTER X

PARTNERSHIP AND ASSOCIATION

SECTION I

GENERAL PROVISIONS

2250. A contract of partnership is a contract by which the parties, with a view to meeting the economic or social needs of their members, agree to carry on an activity or an enterprise, to contribute thereto by combining property, knowledge or activities, and to share any resulting profits.

A contract of association is a contract whereby the parties agree, by combining property, knowledge or activities, to further philanthropic purposes or to meet the needs of their members or of third persons, but without the object of carrying on an enterprise or sharing profits.

2251. A partnership is a legal person upon its registration in the registry of associations and enterprises by the filing of a declaration of constitution of a legal person; otherwise, it is merely contractual and it is not endowed with its own juridical personality.

An association governed by the rules of this chapter is not endowed with juridical personality.

2252. A partnership which registers as a legal person shall assume the juridical form either of a general partnership or of a limited partnership; a partnership not so registered is a joint venture.

2253. The partnership or association is formed upon the conclusion of the contract if no other date is indicated in the contract.

Where a partnership registers as a legal person, relations among the partners before the registration are regulated solely by the contract of partnership.

2254. Where no term is fixed, a joint venture or an association is deemed to be established for the time necessary for the accomplishment of its object.

2255. Relations among partners are subject to the rules of the contract and to those contained in this chapter; in addition, the rules respecting indivision, in the case of a joint venture, or respecting legal persons, in the case of a partnership registered as a legal person, adapted as required, apply in a suppletory manner to such relations.

2256. Where a partnership files a declaration of constitution of a legal person in the registry of associations and enterprises, it shall, in the declaration, set forth the object of the partnership, in addition to the information required under the title *Legal persons* or the Act respecting the registry of associations and enterprises, and set forth that no person other than the persons mentioned therein is a member of the partnership.

A limited partnership shall also indicate the name and domicile of each of the partners, distinguishing which are general partners and which are special partners, and specify the nature and value of the contribution of each partner to the partnership, the date of the payments where the contribution is in cash and paid by instalments, and the nature and value of any contribution a special partner undertakes to make subsequently, with the date and the terms and conditions of payment of this contribution.

2257. Any change to the content of the declaration of constitution of a legal person must be immediately followed by the filing of an amending declaration in the registry of associations and enterprises, indicating the change; the change may be set up against third persons from the filing of the declaration.

2258. A partnership constituted as a legal person shall, in carrying on business, indicate its juridical form in its name or after its name, specifying that it is a general partnership or a limited partnership. A general partnership may use the initials "S.E.N.C." (Société en nom collectif) following its name, and a limited partnership may use the initials "S.E.C." (Société en commandite).

Any act performed by a partnership whose juridical form is not indicated as in this article is governed, with respect to relations between the partnership or its partners and third persons, by the rules applicable to joint ventures.

2259. Registration is proof in favour of third persons in good faith, of the statements contained in the declaration of constitution of a legal person filed in the registry of associations and enterprises, until an amending declaration is filed in the registry or the partnership is deregistered.

Third persons may submit any proof to refute the statements.

SECTION II

GENERAL PARTNERSHIP

§ 1.—*Relations of partners among themselves and with the partnership*

2260. 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, without prejudice to any additional damages.

2261. A contribution of property is made by transferring the 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 deemed to be the seller where his contribution consists of the ownership of the property, and the lessor where his contribution consists of the enjoyment of property.

A contribution consisting of the enjoyment of property that would normally be required to be renewed during the term of the partnership is supposed to transfer the ownership of the property to the partnership, which becomes liable to return property of the same quantity, quality and value.

2262. A contribution consisting of knowledge or activities shall be continuous so long as the partner is a member of the partnership; the partner is liable to the partnership for any profit he realizes from the contribution.

2263. Participation in the profits of a partnership entails the obligation to share in the losses.

2264. The share of each partner in the assets is proportional to his contribution in property, whether the contribution has been made at the constitution of the partnership or in the course of its existence.

The share of a person whose contribution consists only of his knowledge or activities is equal, where not otherwise assessed, to the average share of the persons whose contributions consist of property.

Where the share of each partner in the profits and in the losses is not specified in the contract, it is determined in proportion to his share in the assets.

2265. Any stipulation whereby all the profits made by the partnership are to be allocated to one partner or by which he is exempt from all losses is null.

The same rule applies to any stipulation whereby a partner is excluded from participation in the profits or is liable for all the losses.

2266. A partner cannot compete with the partnership on his own account or on behalf of a third person; any profits arising from such competition belong to the partnership, without prejudice to its other remedies.

2267. A partner is entitled to recover the amount of the outlays he has made on behalf of the partnership and to be indemnified for the obligations he has contracted or the losses he has suffered in acting for the partnership.

2268. Where one of the partners is, for his own account, the creditor of a person who is also indebted to the partnership, and the debts are exigible to the same degree, the amounts he receives from the debtor shall be allocated to both claims in proportion to the amount of each.

2269. 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 carrying on the activities of the latter, but the partnership may oppose the transaction before it is concluded or restrict the right of a partner to bind it.

2270. A partner may associate a third person with himself in his share in the partnership without the consent of the other partners, but the person cannot make him a member of the partnership without their consent.

Within sixty days of 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 him from the partnership by reimbursing him for the price and the expenses he has paid. This right lapses one year from the acquisition of the share.

2271. Where a partner transfers his share in the partnership to a partner or to the partnership or where the partnership redeems it, the value of the share, if the parties fail to agree on it, shall be determined by a person designated by the parties or, failing that, by the court.

In order for it to be set up against third persons, the transfer or redemption must be set forth in an amending declaration filed in the registry of associations and enterprises.

2272. The share of a partner in the assets or profits of the partnership may be charged with a hypothec if the consent of the partnership is attached to the instrument of hypothecation.

2273. Every partner is entitled to participate in the collective decisions, and he cannot be prevented from exercising that right by the articles of the partnership.

The decisions are taken by the vote of a majority of the partners, regardless of the value of their interests in the partnership. However, decisions to amend the contract of partnership must be unanimous.

2274. Where the mode of establishment of the board of directors is not provided in the contract, the board shall be composed of all the partners.

2275. A person who is not a partner may be appointed to act as a director or senior officer of the partnership.

2276. Notwithstanding any stipulation to the contrary, any partner may personally inform himself of the affairs of the partnership and consult its books and records even if he is excluded from management.

In exercising this right, the partner is bound neither to unduly impede the operations of the partnership nor to prevent the other partners from exercising the same right.

§ 2.–*Relations of the partnership and the partners with third persons*

2277. 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 carrying on its activities.

No stipulation to the contrary may be set up against third persons in good faith.

2278. An obligation contracted by a partner in his own name binds the partnership when it comes within the scope of the activities 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 concluded the contract if he had known that the partner was acting on behalf of the partnership.

2279. In respect of third persons, the partners are liable for the obligations contracted by the partnership while they were members of it, in proportion to their share in the assets on the date that the obligations become exigible.

Before instituting proceedings for payment against a partner, the creditors must first institute them against the partnership.

2280. A person who gives sufficient cause for the belief 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 to the third persons unless it could have prevented the act.

2281. Dormant partners are liable towards third persons for the same obligations as ordinary partners.

2282. A partnership cannot make a distribution of securities to the public or issue negotiable instruments, on pain of nullity of the contracts concluded or of the securities or instruments issued and of the obligation to repair the damage it causes to third persons in good faith.

In such a case, the partners are personally and solidarily liable for the obligations of the partnership.

2283. A partnership may, by amalgamation, be absorbed by another partnership or participate in the constitution of a new partnership. It may also transfer its patrimony to an existing partnership or a new partnership.

The special rules governing each partnership determine the terms and conditions of the transactions, which can only be carried out between partnerships assuming the same juridical form, unless these partnerships establish a joint venture among themselves.

2284. A partnership may itself be a partner in another partnership.

§ 3.—*Termination of partnership*

2285. A partnership is extinguished by the causes of dissolution provided under the title on *Legal persons*, and also by the illegality of its object, by judgment, by bankruptcy, or by its deregistration by the Inspector General of Financial Institutions in the ordinary course of administration under the Act respecting the registry of associations and enterprises.

The partnership shall then be liquidated.

2286. Any partnership constituted for an agreed term may be granted an extension by the consent of two-thirds of the votes taken at a special general meeting of partners.

2287. A partnership which carries on its activities after the expiry of the term fixed for its dissolution or after its object is attained is deemed to be a joint venture.

2288. A partnership is not terminated by the uniting of all the shares of the partnership in the hands of a single partner, provided at least one other partner joins the partnership within one hundred and eighty days.

2289. A partner ceases to be a member of the partnership upon his death, upon being placed under protective supervision or becoming bankrupt, or by the exercise of his right of withdrawal; he also ceases to be a member where such is his will, subject to the agreement of the partnership, by his expulsion or by a judgment maintaining the seizure of his share.

2290. A partner, or his representative or successor, may obtain the value of his share upon his 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 agreement as to the value of the share, the value shall be determined by a person designated by the interested persons or, failing that, by the court. The court may, however, defer the assessment of contingent assets or liabilities.

2291. A partner of a partnership constituted for an indeterminate term, of for the life of one of the partners, or for the term of existence of another partnership, may withdraw from the partnership by giving notice of ninety days to it, in good faith and at an opportune moment.

The same rule applies to a partner of a partnership constituted under a contract which reserves the right of withdrawal.

2292. A partner may have another partner expelled where the latter fails to perform his obligations or hinders the carrying on of the activities of the partnership.

2293. The powers of the partners to act on behalf of the partnership cease upon the termination of the partnership, except in respect of acts which are a necessary consequence of business already begun.

Notwithstanding the foregoing, anything done in carrying on the activities of the partnership by a partner unaware of the termination of the partnership and acting in good faith binds the partnership and the other partners as if the partnership were still in existence.

2294. Termination of the partnership does not affect the rights of third persons in good faith who subsequently conclude a contract with a partner or a mandatary acting on behalf of the partnership.

SECTION III

LIMITED PARTNERSHIP

2295. 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.

2296. 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.

2297. General partners have the powers, rights and obligations of the partners of the general partnership but they are bound to render an account of their administration to the special partners.

The general partners are bound by the same obligations towards the special partners as those binding an administrator charged with full administration of the property of others towards the beneficiary of the administration.

Clauses restricting the powers of the general partners cannot be set up against third persons.

2298. General partners shall keep a register at the domicile of the partnership, containing the names and addresses of the special partners and any information concerning their contributions to the common stock.

2299. The contribution of a special partner shall consist of a sum of money or of any other property 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 or deterioration of the agreed contribution by superior force until it is delivered.

2300. While the partnership exists, no special partner may withdraw part of his contribution to the common stock, in any way, unless he obtains the consent of two-thirds of the other partners and the property remaining after the withdrawal is sufficient to discharge the debts of the partnership.

2301. A special partner is entitled to receive his share of the profits, but if the payment of the profits reduces the common stock, every special partner who receives such a payment is bound to restore the amount necessary to cover his share of the deficit, with interest.

In the case of a partnership whose capital includes property that is consumed by exploitation by the partnership, the special partner may receive his share of the profits if the property remaining after the payment is sufficient to discharge the debts of the partnership.

2302. The share of a special partner in the common stock of the partnership is transferable.

In respect to 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.

2303. A special partner cannot give other than an advisory opinion with regard to the administration of the partnership.

A special partner cannot negotiate any business on behalf of the partnership or act as mandatary or agent for the partnership or allow his name to be used in any act of the partnership; otherwise, he is liable in the same manner as a general partner for the obligations of the partnership resulting from the acts and, according to the importance or number of the acts, he may be liable in the same manner as a general partner for all the obligations of the partnership.

2304. Where the general partner is expelled from the partnership, the special partners may perform any act necessary for the management of the partnership. They may, in particular, terminate, without penalty, contracts for services or any contract with a term in excess of one year.

If the general partner is not replaced within ninety days, the partnership becomes a general partnership.

2305. 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 null.

2306. 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.

2307. In the case of the insolvency or bankruptcy of the partnership, a special partner cannot, in that quality, claim as a creditor until the other creditors of the partnership are satisfied.

2308. If the declaration of constitution of a legal person of the limited partnership contains false information or if, although a change has been made in the partnership, no amending declaration has been filed in the registry of associations and enterprises, the partners are

liable towards third persons for the resulting obligations of the partnership, unless they prove that they did not know that the information was false or that the change had not been declared.

2309. In all other respects, the rules governing general partnerships, adapted as required, apply to limited partnerships.

SECTION IV

JOINT VENTURE

§ 1.—*Establishment of the joint venture*

2310. A joint venture arises from a written or verbal contract. It may also arise from an overt act indicating the intention to form a joint venture.

§ 2.—*Mutual relations of the partners*

2311. The partners shall agree upon the object, operation, management and any other terms and conditions of the joint venture within the limits authorized by law.

2312. Unless the partners otherwise determine their mutual relations, they are subject to the rules governing general partnerships with respect to their contributions, shares or participation in the profits and losses.

2313. A partner cannot, on his own account or on behalf of a third person, compete with the other partners in such a manner as to affect the common advantage sought by the partnership contract; the profit resulting from any such competition belongs to the other partners, without prejudice to any remedy they may pursue.

2314. The share of a partner cannot be transferred, except to another partner; nor can it be charged with a hypothec.

2315. Decisions are taken by the vote of a majority of the partners, regardless of the value of their respective interests.

The decision to terminate the contract, however, requires two-thirds of the votes, and a decision to amend the contract must be unanimous.

2316. The partners may appoint one or more copartners to manage their contributions and their activities.

A managing partner, notwithstanding the opposition of the other partners, may perform any act within his powers, provided he does not act fraudulently. The powers of management cannot be revoked without a serious reason during the term of the partnership contract, except where they were conferred by an act subsequent to the contract, in which case they may be revoked in the same manner as a simple mandate.

2317. Where several of the partners are entrusted with the management, generally, and there is no 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.

2318. Failing any special stipulations respecting the mode of management, the partners are deemed to have mutually conferred the power to manage the affairs of the joint venture 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.

One partner cannot make changes to the common property without the consent of the others, regardless of how advantageous such changes may be.

2319. A partner without powers of management cannot alienate or otherwise dispose of common property, saving the rights of third persons.

§ 3.—*Relations of partners with third persons*

2320. In respect of third persons, each partner retains the ownership of the property constituting his contribution to the joint venture.

Property that was undivided before the combination of the contributions of the partners or that is undivided by agreement of the partners, or any property acquired by the use of undivided sums during the term of the partnership contract is deemed to be undivided property in respect of the partners.

2321. Each partner concludes 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.

2322. The partners are not solidarily liable for debts contracted in carrying on their activities; they are liable towards the creditor, each for an equal share, even if their shares in the joint venture are unequal.

2323. No stipulation limiting the extent of the partners' obligation towards third persons may be set up against the third persons.

A partner may object to the performance of an act before it is concluded; he is then released from the obligations arising from the act.

2324. Any stipulation to the effect that an obligation is contracted for the benefit of all the partners binds only the contracting partner if he acts without the express or implied authorization of the other partners, unless the other partners have benefited from the act, in which case they are all bound.

2325. The partners may exercise all the rights arising from contracts concluded by another partner, but the third person is bound only towards the partner with whom he concluded the contract, unless the partner declared his quality.

2326. Any action brought against the partners may be brought against one of them as a partner of other persons, without naming the other persons.

Where judgment is rendered against a partner prosecuted alone, all the other partners may be prosecuted jointly or severally on the original cause of action on which judgment has been rendered. Where the action is founded on an obligation evidenced in a writing in which all the partners bound by it are named, all the partners must be made parties to the action in order for judgment to be set up against them.

§ 4.—*Termination of the contract of partnership*

2327. A contract of partnership is terminated by the expiry of its term or the fulfilment of the condition attached to the contract, by the accomplishment of the object of the contract or by the impossibility of accomplishing the object.

In addition, the contract is terminated by the death or bankruptcy of one of the partners or by his being placed under protective supervision.

2328. It may be stipulated that in the case of death of one of the partners the joint venture will continue with his legal representatives, or among the surviving partners. In the latter case, the representatives of the deceased partner are entitled to the partition of the property of the joint venture only as it existed at the time of death of the partner. They cannot claim benefits arising from subsequent transactions unless they are a necessary consequence of transactions carried out before the death.

2329. Where a contract of partnership is made for an indeterminate term or for the life of one of the partners, or where it reserves the right of withdrawal for one of the partners, 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 at an opportune moment.

2330. A partner may apply for the termination of the contract where one of the partners fails to perform his obligations or hinders the activities of the partners.

2331. The powers of the partners to act under the contract of partnership cease upon the termination of the contract, except as regards acts which are a necessary consequence of business already begun.

Anything done, however, in carrying on the activities of the joint venture by a partner who is unaware of the termination of the joint venture and is acting in good faith binds all the partners as if the joint venture continued to exist.

2332. The termination of a joint venture does not affect the rights of third persons in good faith who subsequently conclude a contract with a partner or any other mandatary of all the partners.

2333. Failing agreement as to the mode of liquidation of the joint venture or the selection of a liquidator, any interested person may apply to the court for the appointment of a liquidator.

2334. A partner or his representative or successor is entitled to the restoration of the property corresponding to the share he owns, and to the apportionment of the property he owns undividedly in the joint venture, in kind or in equivalence in money, upon the termination of the joint venture.

Failing agreement as to the value of the share, the liquidator or, failing him, the court shall determine it. The liquidator or the court may defer assessment of contingent assets or liabilities.

2335. The liquidator is seized of the common property and acts as an administrator of the property of others entrusted with full administration.

The liquidator shall first pay the debts, then reimburse the contributions and, finally, partition the assets among the partners.

SECTION V

ASSOCIATION

2336. An association arises from a written or verbal contract. It may also arise from overt acts indicating the intention to form an association.

2337. Relations between the founding members and the directors, and their relations with third persons, are subject to the rules governing joint ventures.

2338. The articles of the association are presumed to allow the admission of members other than the founding members.

The articles are adopted by a majority of the members present at a general meeting.

2339. Failing any special rules in the articles of the association, the administration of the association and the procedure respecting meetings of the members are governed principally by the rules contained in Chapter II of the title on *Legal persons*, where they are consistent with the rules contained in this section.

2340. The directors of the association shall be elected from among its members.

The founding members are, of right, the directors of the association until the directors are appointed or until they are themselves replaced.

2341. The directors may sue and be sued to assert the rights and interests of the association.

Procedural acts, including the proceeding introductive of suit, shall be served on each director, but service at the address of the known head office of the association, where the address is notorious, has the same effect as service on the directors.

2342. Any decision to amend the contract of association requires adoption by two-thirds of the directors and ratification by a majority of the members present at the general meeting.

2343. Where the property of the association is insufficient, the founding members, until the appointment of directors, the directors and any member administering *de facto* the affairs of the association are solidarily liable for the obligations of the association arising during their administration.

The property of each of these persons shall not be applied to the payment of creditors of the association, however, until after his own creditors are paid.

2344. Any 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.

2345. Notwithstanding any stipulation to the contrary, a member may withdraw from the association, even if it has been constituted 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 a decision of a majority of the members present at a general meeting.

2346. Neither the directors nor the members have any rights in the property of the association, even after the dissolution of the association.

2347. An association is terminated by the expiry of its term or the fulfilment of the condition attached to the contract, by the accomplishment of the object of the contract or by the impossibility of accomplishing that object.

The association is also terminated by a decision adopted by two-thirds of the directors and ratified by a majority of the members present at a general meeting.

2348. When an association is terminated, it shall be liquidated by a person appointed by the directors or, failing that, by the court.

2349. Where an association is liquidated, the directors or liquidators are solidarily bound, after payment of the debts, to use the property of the association for the purposes of the association.

Where the property is not used for the purposes of the association, it devolves to an association or trust sharing similar objectives; if that is not possible, it devolves to the Public Curator or, if of little value, is shared equally among the members.

CHAPTER XI

DEPOSIT

SECTION I

DEPOSIT IN GENERAL

§ 1.—*General provisions*

2350. Deposit is a contract whereby a person, the depositor, hands over movable property to another person, the depositary, who undertakes to receive it, to keep it for a certain time and to restore it.

Deposit is gratuitous but may be onerous title where permitted by usage or an agreement, or where that is apparent from the professional quality of the depositary.

2351. Handing over of the property deposited is essential for the completion of the contract of deposit.

Fictitious handing over is sufficient where the depositary already has detention, under any other title, of the property agreed to be left with him as a deposit.

2352. Where the deposit has been made with a minor person or with a person under protective supervision, the depositor may revendicate the property deposited as long as it remains in the hands of that person; where restitution in kind is impossible, he is entitled to claim the value of the property up to the amount of the enrichment of the person who received it.

§ 2.—*Obligations of the depositary*

2353. The depositary is bound to keep the property with care, and cannot use it without the permision of the depositor.

2354. The depositary cannot require the depositor to prove that he is the owner of the property deposited, or require such proof of the person to whom the property must be restored.

2355. The depositary is bound to restore the deposited property to the depositor on demand, notwithstanding any time that may have been fixed for restitution, unless the time was agreed upon in the sole interest of the depositary.

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.

2356. 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 so received in exchange to the depositor.

2357. The depositary is bound to restore the fruits and revenues he has received from the property deposited.

The depositary owes interest on money deposited only when he is in default of restoring the money.

2358. 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.

2359. A depositary by gratuitous title is liable for the loss or deterioration of the property deposited, if caused by his fault.

Where the depositary is remunerated, he is liable for the loss or deterioration of the property deposited unless it was caused by superior force.

2360. The court may, according to the circumstances, reduce the damages payable by the depositary, particularly where the deposit is gratuitous or where the depositary received in deposit documents, money or other valuables the nature or value of which was not declared by the depositor.

2361. Where the deposit is gratuitous, the property shall be restored at the agreed place, and the cost shall be borne by the depositor; where the depositary has transported the property elsewhere without the knowledge of the depositor, the cost of transportation shall be borne by the depositary unless he did it to preserve the property.

Where the deposit is remunerated, the property shall be restored at the place where it was at the time of the deposit, and the costs shall be borne by the depositary.

§ 3.—*Obligations of the depositor*

2362. The depositor is bound to reimburse the depositary for his expenses 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, where such is the case.

The depositary is entitled to retain the deposited property until he is paid.

2363. The depositor is bound to indemnify the depositary for any damage caused to him by the premature restitution of the property.

SECTION II

NECESSARY DEPOSIT

2364. Necessary deposit takes place where a person is compelled by urgent necessity to entrust the custody of property to another person.

2365. The depositary cannot refuse to accept the property without a serious reason.

The depositary is liable for loss or deterioration of the property in the same manner as a depositary by gratuitous title.

2366. The deposit of property in a health or social services establishment is presumed to be a necessary deposit.

SECTION III

DEPOSIT WITH INNKEEPER

2367. A person who offers lodging to the public, called an innkeeper, is liable in the same manner as a remunerated depositary for the loss or deterioration of the personnal effects and baggage brought by persons who lodge with him, up to ten times the cost of lodging for one day.

2368. An innkeeper is bound to accept for deposit the documents, sums of money and other valuables belonging to his guests; he cannot refuse them unless they are dangerous or cumbersome.

The innkeeper may examine the property handed over to him for deposit and require it to be placed in a closed or sealed receptacle. In such a case, his liability is limited to fifty times the cost of lodging for one day.

2369. Notwithstanding the foregoing, the liability of the innkeeper is unlimited where the loss or deterioration of property belonging to a guest is caused by the gross or intentional 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.

2370. 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.

Where sufficient security is provided for payment of the sum claimed, this rule does not apply.

2371. The innkeeper may dispose of the things retained, failing payment, in the same manner as the holder of property entrusted but forgotten.

2372. The innkeeper is bound to post up the text of the articles of this section, printed in legible type, in the offices, public rooms and bedrooms of his establishment.

SECTION IV

SEQUESTRATION

2373. Sequestration is the deposit of property which is in dispute in the hands of another person chosen by them, who binds himself to return it, once the issue is decided, to the person who will then be entitled to it.

2374. The object of sequestration may be immovable property as well as movable property.

An immovable is handed over by abandonment of detention of the immovable to the sequestrator.

2375. The parties shall elect the sequestrator by mutual agreement; they may elect one of their number to act as sequestrator.

Where the parties disagree on the election of a sequestrator or on certain conditions attached to his duties, the court may appoint a sequestrator and determine the conditions attached to his duties.

2376. A sequestrator cannot incur expenses or perform any act other than acts of simple administration in respect of the sequestered property unless permitted by the agreement or by the court.

The sequestrator, with the consent of the parties or, otherwise, with permission of the court, may, without delay or formalities, alienate property which entails costs of custody or maintenance disproportionate to its value.

2377. The sequestrator is discharged, upon the termination of the contestation, by the restitution of the property to the person entitled to it.

The sequestrator cannot be discharged and restore the property before the contestation is terminated except with the consent of all the parties or, otherwise, for sufficient cause, in which case the discharge must be permitted by the court.

2378. 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.

2379. A sequestrator may be appointed by judicial authority; in such a case, he is subject to the provisions of the Code of Civil Procedure and to the rules contained in this chapter, so far as they are consistent.

CHAPTER XII

LOAN

SECTION I

NATURE AND KINDS OF LOANS

2380. There are two kinds of loans: loan for use and simple loan.

2381. Loan for use is a gratuitous contract whereby one of the parties, 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.

2382. A simple loan is a contract whereby 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 at an agreed term.

2383. A simple loan is presumed to be made gratuitously except where the agreement provides otherwise or in the case of a loan of money, which is presumed to be made by onerous title.

2384. Handing over of the loaned property is not necessary for the formation of the contract of loan.

SECTION II

LOAN FOR USE

2385. The borrower is bound to act with prudence and diligence for the safe-keeping and preservation of the loaned property.

2386. The borrower cannot put the loaned property to any other use than that for which it is intended by its nature or by the agreement.

2387. The lender may claim the property before the due term or, if no term has been fixed, before the borrower ceases to need it, where he himself is in urgent and unforeseen need of the property or where the borrower dies, puts the property to a use other than that for which it is intended, deteriorates it or allows a third person to use it without the consent of the lender.

2388. The borrower is entitled to the reimbursement of any expenses he has incurred for the preservation of the loaned property, if they were necessary and urgent.

The borrower alone shall bear the expenses he has incurred in using the property.

2389. Where the lender knew that the loaned property had defects but failed to inform the borrower, he is bound to repair any damage the borrower has suffered as a result.

2390. The borrower is not liable for loss or deterioration of the property resulting from the use for which it is loaned.

Where 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 or deterioration, even if caused by superior force.

2391. Where the loaned property perishes or is deteriorated 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 or deterioration.

2392. The borrower cannot retain the property for what the lender owes him unless the debt is an urgent and necessary expense incurred for the preservation of the property.

2393. An action in reparation of damage caused to the loaned property by the fault of a third person may be taken by the owner, or by the lender or the borrower, whichever is the more diligent.

2394. Where several persons borrow the same property together, they are solidarily liable towards the lender.

SECTION III

SIMPLE LOAN

2395. By simple loan, the borrower becomes the owner of the loaned property and he bears the risks of loss and deterioration of the property from the time it is handed over to him.

2396. The lender has the same liability in respect of damage resulting from defects in the loaned property as in the case of a loan for use.

2397. Where the loan consists of bullion, foodstuffs or commodities, the borrower is bound to return the same quantity and quality as he received and nothing more, notwithstanding any increase or reduction in their price.

2398. A borrower put in default to restore the loaned property is bound, at the option of the lender, to pay the value the property had at the time and place indicated in the agreement for restitution of the property or, if not indicated, at the time and place that the borrower was put in default, with interest in both cases from the date of the putting in default.

2399. Where the object of a loan consists of a sum of money, the borrower is bound to return only the numerical sum received, notwithstanding any variation in its value.

2400. Where the parties have not fixed any rate of interest, the loan of a sum of money bears interest at the legal rate from the date the money is handed over to the borrower.

2401. The discharge of the principal of a loan of money entails the discharge of the interest.

2402. In the case of a loan of a sum of money, the court, on the application of the borrower or the lender, may revise the terms and conditions of the loan where, owing to the precarious financial condition of the borrower, there is a serious danger that they cannot be met, provided no serious damage is caused to the lender as a result.

CHAPTER XIII

SURETYSHIP

SECTION I

NATURE, OBJECT AND EXTENT OF SURETYSHIP

2403. Suretyship is a contract by which a person, called the surety, binds himself, gratuitously or for remuneration, towards the creditor to perform the obligation of the debtor if he fails to fulfil it.

2404. Suretyship may be set up by contract or by law or ordered by judgment.

2405. Suretyship is not presumed; it must be express.

2406. 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.

2407. 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 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.

2408. Where a debtor is bound to furnish a legal or judicial surety, he may offer any other sufficient security instead.

2409. Any dispute as to the sufficiency of the property of the surety or the sufficiency of the security offered shall be settled by the court.

2410. Suretyship can only be for a valid obligation.

Suretyship for an obligation of which the principal debtor may be discharged by invoking the fact that he is a minor or a person of full age under protective supervision is valid nevertheless, if the surety is aware of it.

2411. Suretyship cannot exceed the amount owed by the debtor or be contracted under more onerous conditions.

Suretyship which exceeds the debt or which is contracted under more onerous conditions is not null; it is only reducible to the measure of the principal obligation.

2412. Suretyship may be contracted for only part of the principal obligation and under less onerous conditions.

2413. A suretyship cannot be extended beyond the limits for which it was contracted.

2414. Suretyship extends to all the accessories of the original obligation, even to the costs of the original action, and to all costs subsequent to notice of such action given to the surety.

2415. The heirs of the surety are liable only for the debts existing at the time of his death, even if these debts are subject to a condition or a term.

SECTION II

EFFECTS OF SURETYSHIP

§ 1.—*Effects of suretyship between the creditor and the surety*

2416. At the request of the surety, the creditor is bound to provide him with any useful information respecting the principal obligation and its performance, and respecting any facts known to him that may be detrimental to the surety.

2417. The surety is bound to fulfil the obligation of the debtor only if the debtor fails to perform it.

2418. A conventional or legal surety enjoys the benefit of discussion unless he renounces it expressly.

2419. A surety who avails himself of the benefit of discussion shall invoke it in any action taken against him, point out to the creditor the seizable property of the principal debtor, and advance to him the sums required for the costs of discussion.

Where the creditor neglects to carry out the discussion, he is liable towards the surety, up to the value of the property pointed out, for any insolvency of the principal debtor occurring after the surety has pointed out the seizable property of the principal debtor.

2420. Where several persons become sureties of the same debtor for the same debt, each of them is liable for the whole debt and may invoke the benefit of division unless he has 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.

2421. If, at the time judgment of division was obtained by one of the sureties, some of them were insolvent, that surety is proportionately liable for their insolvency, but he cannot be made liable for insolvencies occurring after the division.

2422. Where the creditor has himself voluntarily divided his action, he cannot call the division into question, although at the time some of the sureties had become insolvent.

2423. Where the surety binds himself with the principal debtor as surety or solidary codebtor, the creditor may proceed against the surety before seeking remedy from the debtor. The other 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.

2424. 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 nature of his undertaking.

2425. Mere prorogation of the term granted by the creditor to the principal debtor does not discharge the surety, but forfeiture of

the term by the principal debtor produces its effects in respect of the surety.

2426. Renunciation by the surety of the rights conferred on him by law or by the contract is valid unless the creditor is in bad faith or abuses his rights.

No person may renounce in advance the right to be informed or to the benefit of subrogation.

§ 2.—*Effects between the debtor and the surety*

2427. A surety who has bound himself with the consent of the debtor may claim from him what he has paid in principal, interest and costs; he may also charge interest on any sum he has had to pay to the creditor, even if the principal debt was not producing interest.

A surety who has bound himself without the consent of the debtor can only recover from him what the debtor would have been bound to pay if there had been no suretyship; however, costs subsequent to indication of the payment are payable by the debtor.

2428. Where the principal debtor has been released from his obligation by invoking the fact that he is a minor or a person of full age under protective supervision, the surety has, to the extent of the resulting enrichment of the debtor, a remedy for reimbursement against him.

2429. A surety having paid a debt has no remedy against the principal debtor who pays it subsequently, if he failed to warn the debtor that he had paid it.

A surety who has paid without being sued and without warning the principal debtor has no remedy against him if, at the time of the payment, the debtor had defences that could have enabled him to have the debt declared extinct. In these circumstances, the surety has a remedy only for the amount the debtor could have been required to pay, to the extent that the debtor could set up other defences against the creditor, which the surety could not have been unaware of, to cause the debt to be reduced.

In any case, the surety retains his right of action for recovery against the creditor.

2430. 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 discharge within a certain time.

The surety may also take action against the debtor when the debt becomes payable by the expiry of the term for which it was contracted, disregarding any extension granted to the debtor by the creditor without the consent of the surety, or where, by reason of losses incurred by the debtor or of any fault committed by the debtor, the surety is at appreciably higher risk than at the time he bound himself.

§ 3.—*Effects among sureties*

2431. Where several persons have become sureties of the same debtor for the same debt, the surety who has paid the debt has in addition to the action in subrogation, a personal right of action against the other sureties, each for his share and portion.

The personal right of action can only be exercised where the surety has paid in one of the cases in which he could take action against the debtor before paying.

Where one of the sureties is insolvent, his insolvency is apportioned by contribution among the other sureties, including the surety who made the payment.

SECTION III

TERMINATION OF SURETYSHIP

2432. Notwithstanding any contrary provision, the death of the surety terminates the suretyship.

2433. Where the suretyship is contracted for an indefinite period or an indefinite amount, the surety may terminate it after three years, as long as the obligation has not become exigible, by giving sufficient notice to the debtor, the creditor and the other sureties.

This rule does not apply in the case of a judicial suretyship.

2434. A suretyship attached to the performance of special duties is extinguished upon cessation of the duties.

2435. 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 damage he has suffered.

2436. Where a creditor voluntarily accepts property in payment of the principal debt, the surety is discharged even if the creditor is subsequently evicted.

CHAPTER XIV

ANNUITY

SECTION I

NATURE OF THE CONTRACT AND SCOPE OF THE RULES GOVERNING THE CONTRACT

2437. A contract for the constitution of an annuity is a contract by which a person, called the debtor, undertakes, gratuitously or in exchange for the alienation of capital for his benefit, to make periodical payments to another person, the annuitant, for a certain time.

The capital may consist of immovable or movable property; if it is a sum of money, it may be paid in a lump sum or by instalments.

2438. Where the debtor undertakes to pay the annuity in return for the transfer, for his benefit, of ownership of the immovable, the contract is called alienation for rent and it is principally governed by the rules respecting contracts similar to contracts of sale.

2439. 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.

2440. An annuity may be constituted not only by contract, but also by will, by judgment or by law.

The rules of this chapter, adapted as required, apply to such annuities.

SECTION II

SCOPE OF THE CONTRACT

2441. 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.

2442. A life annuity may be set up for the lifetime of the person who constitutes it or who receives it or for that of a third person who has no entitlement whatever to the enjoyment of it.

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 of the annuity was constituted, for the benefit, as the case may be, of a specific person or of the heirs of the annuitant.

2443. A life annuity set up for the lifetime of a person who was dead on the day the annuity was constituted or who dies within thirty days of the constitution of the annuity is null.

Similarly, a life annuity set up for the lifetime of a person who does not exist at the time of the constitution of the annuity, unless the person was conceived at that time and is born alive and viable, is null.

2444. 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 annuity is constituted or if he is conceived at that time and is born alive and viable.

The life annuity terminates when those persons are dead, and not later than one hundred years after it is constituted.

2445. Non-returnable loan is presumed to constitute a life annuity for the benefit and for the lifetime of the lender.

2446. 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 even if the contract provides for a longer duration or constitutes a successive annuity.

SECTION III

CERTAIN EFFECTS OF THE CONTRACT

2447. 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.

2448. Any capital accumulated for the payment of the annuity is unseizable where the annuity must be paid to the annuitant and to his substitute, so long as the capital is applied to the payment of an annuity.

Only that part of the capital is unseizable, however, which, in the estimation of the seizing creditor, the debtor and the annuitant or, if they disagree, the court, would be necessary, for the duration fixed in the contract, for the payment of an annuity which would meet the requirements of the annuitant and his family for support.

2449. The designation or revocation of an annuitant, other than the person who furnished the capital of the annuity, is governed by the rules respecting stipulations in favour of others.

The designation or revocation of an annuitant, in respect of annuities transacted by insurers or of retirement plan annuities, is governed, however, by those rules respecting the contract of insurance which relate to beneficiaries and subrogated holders, adapted as required.

2450. A stipulation may be made to the effect that a life annuity is revertible, on the death of the annuitant, upon the life of another person, provided that the person exists on the day the annuity is constituted or, if he was conceived at that time, provided he is born alive and viable.

A life annuity paid to a married person is presumed, on his death, to be revertible upon the life of the surviving spouse.

2451. The life annuity is due to the annuitant only in proportion to the number of days in the lifetime of the person upon whose life the duration of payment of the annuity was established, and the annuitant cannot require payment of the annuity unless he establishes the existence of the person.

Where it was stipulated that the annuity would be paid in advance, however, every amount that should have been paid is acquired from the day payment was to have been made.

2452. Payments shall be made at the end of each month and the amount due shall be computed from the date of constitution of the annuity.

2453. In no case may the debtor free himself from the payment of the annuity by offering to reimburse the capital value of the annuity

and renouncing the recovery of the annuity payments made; he shall pay the annuity for the whole duration stipulated in the contract.

2454. The debtor of an annuity may appoint an authorized insurer to replace him, by paying him the cash value of the annuity.

Similarly, the owner of an immovable charged with security for the payment of the annuity may substitute the security offered by an authorized insurer for the security attached to the annuity.

The annuitant cannot object to the substitution, but he may require that the purchase of the annuity be made with another insurer, or he may contest the determined capital value or the value of the annuity arising therefrom.

2455. The substitution releases the debtor or the owner of the immovable charged with security for the payment of the annuity, upon payment of the required capital; it binds the insurer towards the annuitant and, as the case may be, entails the extinction of the hypothec securing the payment of the annuity.

2456. The non-payment of the annuity is not a sufficient 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.

Notwithstanding the foregoing, payment of the capital may be required if the debtor becomes notoriously insolvent, becomes 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.

2457. Where the payment of an annuity is secured by a hypothec on property to be sold under court order or by a creditor, the annuitant cannot require that the sale be carried out subject to his annuity, but if his hypothec ranks first, he may require the creditor to furnish him with a surety to guarantee that the price of the sale will allow the continued payment of the annuity out of the proceeds.

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.

2458. The capital value of an annuity is always estimated to be equal to the amount that would be sufficient to acquire an annuity of equivalent value from an authorized insurer.

CHAPTER XV

INSURANCE

SECTION I

GENERAL PROVISIONS

§ 1.—*Nature of the contract of insurance and classes of insurance*

2459. 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.

2460. The object of marine insurance is to indemnify the insured against losses incident to marine adventure.

2461. Non-marine insurance is divided into insurance of persons and damage insurance.

Non-marine insurance is also divided into individual insurance and group insurance.

Group insurance of persons provides, under a master contract, coverage to persons belonging to a specified group and, in certain cases, their families or dependants.

2462. Insurance of persons deals with the life, health and physical integrity of the insured.

2463. 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 assimilate to life insurance but remain also governed by the chapter on annuities.

2464. 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.

2465. Damage insurance protects the insured from the consequence of an event that may adversely affect his patrimony.

2466. 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.

2467. The contract of reinsurance, by which an insurer procures a third person to insure him against risks assumed by him need not be notified to the holder of, participant in or third party beneficiary to the contract of insurance, and the latter persons cannot avail themselves of the contract of reinsurance unless it so provides.

§ 2.—*Formation and content of the contract*

2468. A contract of insurance is formed upon acceptance by the insurer of the application of the client, even though formal acceptance may not be communicated to the insured until later.

In non-marine insurance, the policy in force immediately before the renewal constitutes the application of the client unless changes in the policy are requested.

2469. The policy is the document evidencing 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, the method of identifying them, the policy must set out the subject matter of the insurance, the amount of coverage, the nature of the risk insured, the time from which the risk is 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.

2470. In non-marine insurance, the insurer shall furnish the policy to the client, together with a copy of any application made in writing by the insurer or on his behalf.

In case of discrepancy between the policy and the application, the latter prevails unless the insurer has indicated to the client, in a third writing, the discrepancies he has discovered, and more particularly, discrepancies with respect to the risk, the obligations of the insured and exclusions or limitations of coverage.

2471. In group insurance, the insurer shall issue the group insurance policy to the client and furnish to him the insurance certificates, which he must distribute to the participants.

Participants and beneficiaries may examine and make copies of the policy at the place of business of the client and, in case of discrepancies between the policy and the insurance certificate, they may invoke either one according to their interest.

2472. In non-marine insurance, any general clause whereby the insurer is released from his obligations if the insured violate an Act or regulation is deemed null unless the violation is an indictable offence.

Any clause of a policy whereby the insured undertakes, if he sustains a loss, to effect an assignment of claim to his insurer that would result in granting his insurer more rights than he would have under the rules on subrogation is deemed null.

2473. Subject to the special provisions on marine insurance, the insurer cannot invoke conditions or representations not written in the contract.

2474. In insurance of persons, the insurer cannot invoke any exclusions or clauses of reduction of coverage except those clearly indicated under an appropriate heading such as "Exclusions and reduction of coverage".

2475. 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 warranty has no effect unless the policyholder consents to the reduction in writing.

2476. 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.

2477. A certificate of participation in a mutual association may establish the rights and obligations of a member by reference to the articles of the association, but only the constituting instrument and those

by-laws which are clearly referred to in the certificate may be invoked against the member.

Every member is entitled to a copy of the articles of the association in force.

§ 3.—*Representations and warranties of the insured in non-marine insurance*

2478. 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.

The insurer for his part, is bound, except with respect to unusual or extraordinary facts, to question the client specifically as to those facts related to the risk which he considers important.

2479. The obligation respecting representations is deemed properly met if the representations are such as a reasonably well-informed applicant would make, if they are made without material concealment and if the facts are substantially as represented.

2480. 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.

2481. 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 stipulated amount of insurance as the premium he received bears to the premium he should have received.

2482. 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.

2483. Where the representations contained in the application for insurance were entered in it by the representative of the insurer, proof may be made by testimony that they do not correspond to what was actually represented.

§ 4.—*Miscellaneous*

2484. In non-marine insurance, the insurance agent or insurance broker is presumed to be the representative of the insurer.

2485. In non-marine insurance, no derogation from the provisions of this chapter may be made by agreement, except to the extent that the change is more favourable to the insured, the participant, the beneficiary or the policyholder, according as the derogation is from an article adopted for the protection of one or the other of those persons.

Even where that is the case, any stipulation which derogates from the rules on insurable interest or, in liability insurance, from those protecting the rights of injured third persons is null.

SECTION II

INSURANCE OF PERSONS

§ 1.—*Contents of the policy*

2486. In addition to the particulars prescribed for policies generally, a policy of insurance of persons must set out, if applicable, the name of the insured or the method of identifying him, the time limits for the payment of premiums, the right of the holder to dividends, the method or table according to which the surrender value is established and the rights of the holder to the surrender value or to advances on the policy.

The policy must also set out, if applicable, the conditions of reinstatement, the right to convert the insurance, the terms and conditions of payment of sums due and the period during which benefits are payable.

2487. In an accident and sickness policy, the insurer must set out expressly and clearly the nature of the coverage stipulated in it; if the contract provides coverage against disability, he must set out in the same manner the terms and conditions of payment of the indemnities and the nature and extent of the disability covered if the inability of the insured to carry on his usual occupation is not fully covered.

2488. In accident and sickness insurance, the insurer cannot, except in case of fraud, exclude or reduce the coverage by reason of a disease or ailment disclosed in the application except under a clause referring by name to the disease or ailment.

Except in the case of fraud, an insurer cannot, by a general clause, exclude or limit the coverage by reason of a disease or ailment not disclosed in the application unless the disease or ailment appears within the first two years of the insurance.

§ 2.—*Insurable interest*

2489. In individual insurance, a contract is null if at the time of concluding it the client has no insurable interest in the life or health of the insured, unless the insured consents in writing.

Subject to the same reservation, the transfer of such a contract is null if the transferee does not have the required interest at the time of the transfer.

2490. 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 and of any person upon whom he is dependent for support or education.

He also has an insurable interest in the life and health of his employees and staff or of any person in whose life and health he has a pecuniary or moral interest.

§ 3.—*Representation of age and risk*

2491. Misrepresentation of the age of the insured does not entail the nullity of the insurance, but it allows the insurer to adjust the sum insured in proportion to the relation between the premium collected and the premium that should have been collected, corresponding to the true age of the insured.

In accident and sickness insurance, the insurer may elect instead to adjust the premium to make it correspond to the premium applicable to the true age of the insured.

2492. In life insurance, the insurer may bring an action for the annulment of the contract if, at the time of formation of the contract, the age of the insured exceeds the limits fixed by the insurer's rates.

The insurer must bring the action within five years of the formation of the contract, as well as during the life-time of the insured and within sixty days after becoming aware of the error.

2493. 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.

2494. In group insurance, misrepresentation or concealment by a participant as to age or risk affects only the insurance of the persons concerned by the misrepresentation or concealment.

2495. In the absence of fraud, misrepresentation or concealment as to risk cannot justify the annulment or reduction of insurance which has been in force for two years.

This rule does not apply in the case of disability insurance if the disability begins during the first two years of the insurance.

§ 4.—*Effective date*

2496. Life insurance takes effect when the application is accepted by the insurer, provided that it is accepted without modification, that the initial premium or part of the initial premium has been paid, and that there has been no change in the insurability of the risk since the application was signed.

2497. 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 an authorized representative of the insurer.

A policy issued in accordance with the application and given to a representative of the insurer for unconditional delivery to the client is also validly delivered.

§ 5.—*Premiums, advances and reinstatement*

2498. In life insurance, the policyholder is entitled to thirty days for the payment of each premium; the insurance remains in force during the thirty days but failure to pay the premium within that period terminates the insurance.

The period runs concurrently with any other period granted by the insurer, but it cannot be reduced by agreement.

2499. 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.

2500. The premium does not bear interest during the period allowed for payment, except in group insurance.

Where the insurer is entitled to charge interest on a premium due, he cannot do so at a higher rate than that fixed by the regulations made to that effect by the Government.

2501. No accident and sickness insurance contract may, after delivery of the policy to the policyholder, be rescinded for non-payment of the initial premium unless the insurer gives fifteen day's prior notice in writing to the debtor of the premium.

Non-payment of premiums relating to the renewal certificates issued to the policyholder entails rescission only if similar notice is given.

2502. The insurer is bound to reinstate individual life insurance that has been terminated for non-payment of the premium if the policyholder applies to him therefor within two years from the date of the rescission and establishes that the insured still meets the conditions required to be insured under the rescinded 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.

2503. Any payment that must be made for the reinstatement of a contract may be made out of advances receivable on the policy up to the amount allowed by the contract.

2504. The insurer may require the payment of overdue premiums when settling a claim under a group life insurance contract or an accident and sickness insurance contract.

The insurer may also, when settling a claim under a personal insurance contract, deduct the amount of any overdue premium out of the benefits payable.

2505. 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 by reason of misrepresentation or concealment relating to the risk, or by reason of the application of a clause of exclusion of coverage in case of the suicide of the insured, runs again.

§ 6.—*Performance under the terms of the contract of insurance*

2506. The holder of an accident and sickness policy or the beneficiary or insured must give written notice of loss to the insurer within thirty days of acquiring knowledge of it. He must also, within ninety days, transmit all the information to the insurer that he may reasonably expect as to the circumstances and extent of the loss.

The person entitled to the payment is not prevented from receiving it if he proves that it was impossible for him to act within the prescribed period, provided the notice is sent to the insurer within one year of the loss.

2507. The insurer is bound to pay the sums insured and the other benefits provided in the policy, in accordance with the conditions of the policy, within thirty days after receipt of the required proof of loss.

In accident and sickness insurance, the period is sixty days, unless the policy covers losses of income due to disability.

2508. 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 required proof is furnished to the insurer at his request.

2509. The insured must submit to a medical examination when the insurer is entitled to require it owing to the nature of the disability.

2510. In accident and sickness insurance, where an aggravation of the occupational risk has lasted for six months or more, the insurer may reduce the indemnity provided under the policy to the amount payable for the new risk according to the premium stipulated in the policy.

Where there is a reduction of the occupational risk, the insurer is bound, from receipt of a notice to that effect, to reduce the rate of the premium accordingly or to extend the insurance by applying the rate corresponding to the new risk, as the policyholder may elect.

2511. 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.

2512. The insurer cannot refuse payment of the sums insured by reason of the suicide of the insured unless he stipulated an express clause of exclusion of coverage in such a case and, even then, the stipulation is null if the suicide occurs after two years of uninterrupted insurance.

2513. The terms of a contract of insurance for funeral expenses whereby a person undertakes, for a premium paid in a single lump sum 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 are not susceptible of performance.

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 nullity of the contract or refund of the premium.

2514. An attempt on the life of the insured by the policyholder entails, by operation of law, termination 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 of only such rights as that person may have to the insurance.

2515. The benefits established in favour of a member of a mutual benefit association, or of his spouse, ascendants or descendants are unseizable either for debts of the member or debts of the beneficiaries.

§ 7.—*Designation of beneficiaries and subrogated policyholders*

I – Conditions of the designation

2516. 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 of succession among them upon the death of any preceding policyholder.

The proceeds of a life insurance policy cannot be payable to the bearer.

2517. The designation of beneficiaries or of subrogated policyholders is made in the policy or in a separate writing which may or may not be in the form of a will.

2518. 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 exercisable he exist or, if he is conceived but not born, that he be born live and viable and that his quality be recognized.

The designation of a beneficiary is presumed made on the condition that the beneficiary exists at the time the proceeds of the insurance become payable; 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.

2519. 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, except where the insured died intestate, leaving no heir within the degrees of succession. In similar circumstances, the initial policyholder is deemed to have survived the subrogated policyholder.

2520. The designation, by the policyholder or participant, of his spouse as beneficiary is irrevocable unless otherwise stipulated. The designation of any other beneficiary is revocable unless otherwise stipulated in the policy or in a separate writing other than a will. The designation of a subrogated policyholder is always revocable.

Where revocation is permitted, it must result from a writing but need not be express.

2521. A designation or revocation contained in a will that is null by reason of a formal defect is not null for that sole reason, but if the will is revoked, the designation or revocation is also 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 identifies the insurance policy in question or unless the intention of the testator in that respect is manifest.

2522. Regardless of the terms used, every designation of beneficiaries or subrogated policyholders remains revocable until received by the insurer, even where it is stipulated that it is irrevocable.

2523. Designations and revocations may be set up against the insurer only from the day he receives them; where several irrevocable designations of beneficiaries are made separately and at different times, they are given priority according to their dates of receipt by the insurer.

The insurer is discharged by payment in good faith in accordance with these rules to the last known person entitled to it.

II – Effects of designation

2524. 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.

2525. The policyholder is entitled to the dividends and other benefits conferred on him by the contract even if the beneficiary has been designated irrevocably.

Dividends and benefits must be applied by the insurer to any premium due to keep the insurance in force.

2526. 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.

2527. Insurance payable to the succession or to the assigns, heirs, legatees, liquidators, testamentary executors or other legal representatives of a person pursuant to a stipulation in which those terms or similar terms are employed forms part of the patrimony of the person.

The rules respecting representation of heirs do not apply to insurance matters but those respecting accretion to the benefit of particular legatees apply, if circumstances allow, where several beneficiaries or subrogated policyholders have been designated and the sums insured devolve to them.

2528. Where the designated beneficiary of the insurance is the spouse, descendant or ascendant of the policyholder or of the participant, the rights under the contract are exempt from seizure until the beneficiary receives the sum insured.

2529. 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 of the policyholder, participant or beneficiary are exempt from seizure.

2530. 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 and nullity of marriage cause any designation of the spouse as beneficiary or subrogated policyholder to lapse.

2531. Even if the beneficiary has been designated irrevocably, the policyholder and the participant may dispose of their rights, subject to the rights of the beneficiary.

§ 8.—*Assignment and hypothecation of a right under a contract of insurance*

2532. The assignment or hypothecation of a right arising out of a contract of insurance cannot be set up against the insurer, the beneficiary or third persons until the insurer receives notice thereof.

Where a right under a contract of insurance is subject to several assignments or hypothecations priority is determined by the date on which the insurer is notified.

2533. 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 designation of the beneficiary or the subrogated policyholder only in respect of those amounts.

SECTION III

DAMAGE INSURANCE

§ 1.—*Provisions common to property insurance and liability insurance*

I – Principle of indemnity

2534. In damage insurance, the insurer is obliged to repair any damage suffered by reason of a loss but only up to the amount of the insurance.

2535. The insurer is liable for any damage resulting from irresistible force or the fault of the insured unless a clause of exclusion of liability as to any such event or fact is expressly and restrictively stipulated in the policy. However, the insurer is never liable for damage resulting from the insured's intentional fault.

Where the insurer is liable for damage caused by a person for whose acts the insured is liable, he is liable for the damage regardless of the nature or gravity of the fault of that person.

2536. The insurer is not liable for damage resulting from natural loss, diminution, leakage or breakage sustained by the insured property arising from the inherent vice or the nature of the property.

II – Material change in risk

2537. The insured must promptly notify the insurer of material changes within his knowledge that increase the risk described in the policy.

If the insured fails to discharge his obligation, the provisions of article 2481 apply, adapted as required.

2538. On being notified of new circumstances, the insurer may terminate the contract or, in writing, propose a new rate of premium. Unless the new premium is accepted and paid by the insured within thirty days of the proposal, the policy ceases to be in force.

If the insurer continues to accept the premiums or if he pays an indemnity after a loss has occurred, he is deemed to have acquiesced in the change notified to him.

2539. Inoccupancy of a house does not constitute a change material to the risk if it does not last more than thirty consecutive days or if the insurance relates to a vacation residence designated as such.

Nor is the admission of tradesmen into the house to do maintenance or repair work for a period of less than thirty days a change material to the risk.

III – Payment of the premium

2540. The insurer is entitled to the premium only from the time the risk begins, and only for its duration if the risk disappears completely as a result of an event that is not covered by the insurance.

The insurer may bring an action for payment of the premium or deduct it from the indemnity payable.

IV – Notice of loss and payment of the indemnity

2541. The insured must notify the insurer of any loss which may give rise to an indemnity, as soon as he becomes aware of it.

Any interested person may give such notice.

2542. At the request of the insurer, the insured must inform him, within the time specified in the contract, of all the circumstances surrounding the loss, including its probable cause, the nature and extent of the damage, the location of the subject matter insured, the rights of third persons affecting it, and any concurrent insurance; he must also furnish him with vouchers in support of such information and attest under oath or by solemn affirmation to the truth of the information.

Where, for a serious reason, the insured is unable to fulfil such obligation within the specified time, he is nevertheless entitled to a reasonable extension, even if a term of forfeiture is stipulated in the contract.

If the insured is failing to fulfil his obligation, any interested person may do so on his behalf, within the same time limits.

2543. Any deceitful representation by the insured entails forfeiture of his rights to the indemnity.

If the deceitful representation pertains to only some of the risks covered, such as theft or civil liability, or if it respects only a particular class of insured property, such as movable property or professional equipment, forfeiture is incurred only with respect to the risks so misrepresented.

2544. 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.

2545. The insurer is subrogated to the rights of the insured against third persons who are responsible for the loss, up to the amount of indemnity paid. The insurer may be fully or partly released from his obligation towards the insured where, owing to any act of the insured, he cannot be so subrogated.

The insurer cannot be subrogated against persons who are members of the household of the insured.

V – Transfer

2546. A contract of individual property insurance may, with the sole consent of the insured, be transferred to a third person who has an insurable interest in the subject matter insured, provided the insurer is immediately notified of the name and address of the transferee.

The insurer may then terminate the contract or, in writing, propose a new rate of premium. Unless the new premium is accepted and paid by the assignee within thirty days of the proposal, the policy ceases to be in force. However, if the insurer continues to accept the premiums or if he pays an indemnity after a loss has occurred, he is deemed to have acquiesced in the transfer.

2547. Upon the death or bankruptcy of the insured or the transfer of his interest in the insurance to a co-insured, the insurance continues in favour of the heir, trustee in bankruptcy or remaining insured, subject to his performing the obligations that were incumbent upon the insured.

VI – Termination of the contract

2548. The insurer or the insured may terminate the contract by notice in writing which must be sent to all the named insured if the contract is terminated by the insurer, or given by all the named insured if terminated by the insured.

The contract is terminated, as the case may be, fifteen days after notice from the insurer is received by the insured at his last address known to the insurer, or upon receipt by the insurer of notice from the insured.

2549. Where the right to the indemnity has been transferred as a hypothec and notice of the deed of hypothec has been served on the

insurer, the contract cannot be terminated or amended to the detriment of the hypothecary creditor unless the insurer has given him prior notice of at least fifteen days.

2550. Where the insurance is terminated, the insurer is entitled to only the earned portion of the premium, computed day by day if the contract is terminated by the insurer, or at the short-term rate if terminated by the insured; the insurer must refund any overpayment.

§ 2.—*Property insurance*

I – Contents of the policy

2551. In addition to the particulars prescribed for insurance policies generally, a property insurance policy must set out any exclusion of coverage not resulting from the ordinary meaning of the words or any limitation of coverage applying to specified objects or classes of objects, and specify the conditions on which the contract may be terminated by the insured, as well as those on which the insurance may be reinstated or continued after a loss.

II – Insurable interest

2552. A person has an insurable interest in a property where the loss or deterioration of the property may cause him direct and immediate damage.

The insurable interest must exist at the time of the loss but the same interest need not have existed throughout the duration of the contract.

2553. Future property and incorporeal property may be the subject matter of a contract of insurance.

2554. Property insurance contracted on behalf of whomever it may concern is valid as insurance for the benefit of the policyholder or as provision for a third person in favour of the beneficiary of the contract, whether he be known or contingent.

2555. The insurance of a subject matter in which the insured or the participant has no insurable interest is null.

III – Extent of coverage

2556. 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.

2557. The insurer is not liable for damage caused by foreign or civil war, riot or civil disturbance, nuclear explosion or the resulting radioactive contamination, or by volcanic eruption, earthquake or other cataclysm.

2558. The insurer is liable for damage to the subject matter insured caused by measures taken to save or protect it.

2559. 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.

2560. The insurance of a furnished house and that of movable property in general covers every class of movable property except what is expressly excluded or what is insured for only a limited amount.

IV – Amount of the insurance

2561. The value of the insured property is determined in the ordinary manner unless a special valuation formula is contained in the policy.

2562. In unvalued policies, the amount of the insurance does not make proof of the value of the subject matter insured.

In valued policies, the agreed value makes complete proof, between the insurer and the insured, of the value of the subject matter insured.

2563. A contract made without fraud for an amount greater than the value of the subject matter insured 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.

2564. The insurer cannot refuse to cover a risk for the sole reason that the amount of insurance is less than the value of the subject matter insured. In such a case, he is released by paying the amount of the insurance in the event of total loss or a proportional indemnity in the event of partial loss.

V – Losses, and payment of indemnity

2565. Subject to the rights of preferred and hypothecary creditors, the insurer may reserve the right to repair, rebuild or replace the property insured. He is then entitled to the salvage and may take over the property.

2566. The insured cannot abandon the damaged property if there is no agreement to that effect.

The insured has an obligation to facilitate the salvage and inspection of the insured property by the insurer. He must, in particular, permit the insurer and his representatives to visit the premises and examine the insured property.

2567. Where several contracts of insurance are concluded, without fraud, referring to the same property and against the same risks, each contract produces its effects in proportion to the total coverage in force, up to the amount of the loss.

The insurers are not entitled to invoke the benefit of division against the insured; he may sue each insurer for the full amount of coverage with that insurer, until he has been fully indemnified.

2568. Notwithstanding any contrary provision, the indemnities due to the insured are apportioned among the creditors holding preferred claims or hypothecs on the damaged property, according to their rank and without express delegation, upon mere notice and proof by them.

Notwithstanding the foregoing, payments made in good faith before the notice discharge the insurer.

§ 3.—*Liability insurance*

2569. Civil liability, whether contractual or extracontractual, may be the subject of a contract of insurance.

2570. In addition to the particulars prescribed for insurance policies generally, a liability insurance policy must specify the relation between persons and property and between persons and acts which

entails liability, the amounts of and exclusions from coverage, and the compulsory or optional nature of the insurance and the direct and indirect beneficiaries of it.

2571. The proceeds of the insurance must be applied exclusively to the payment of third persons injured.

2572. An injured third person may bring an action directly against the insurer of the person responsible for the damage suffered, provided the insured is impleaded.

The insured need not be impleaded where his liability is acknowledged by the insurer or where it is impossible to summon the person who caused the damage.

2573. 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 in recourse against the insured in respect of facts that occurred after the loss.

2574. 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 of 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.

The obligations of the insurer exist only in relation to the amount of the insurance liability under the policy.

2575. No settlement made without the consent of the insurer may be set up against him.

SECTION IV

MARINE INSURANCE

§ 1.—*General provisions*

2576. Marine insurance provides coverage against the losses incident to marine adventure.

Marine insurance may be extended to 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.

2577. 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 pecuniary benefit, such as freight, passage money, commission or the security for any advances, loan or disbursement, is endangered by the exposure of insurable property to maritime perils.

2578. 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.

2579. 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.

2580. Insurance on freight covers the profit derivable by a shipowner from the employment of his ship to carry his own goods or movables as well as freight payable by a third party, but does not include passage money.

2581. The insurance on movables covers all movables not covered by the insurance on the ship.

§ 2.—*Insurable interest*

1 – Necessity of interest

2582. The insurable interest need not exist when the contract is made but it must exist at the time of the loss.

The acquisition of an interest after a loss does not validate the insurance. However, where the subject matter 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.

2583. Every contract of marine insurance by way of gaming or wagering is absolutely null.

There is a gaming or wagering contract where the insured has no insurable interest and the contract is entered into with no expectation of acquiring such an interest.

A contract of marine insurance is deemed to be a gaming or wagering contract where the policy is made "interest or no interest" or "without further proof of interest than the policy itself", or "without benefit of abandonment to the insurer" where there is in fact a possibility of abandonment.

II – Instances of insurable interest

2584. 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 detention, loss or damage.

2585. A defeasible, contingent or partial interest may be the subject matter of a contract of marine insurance.

2586. 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 the freight so far as it is not repayable in case of loss even where he is entitled to reject the goods or treat them as at the seller's risk, and for the hypothecary debtor in respect of the full value of the hypothecated property, and the hypothecary creditor up to the amount of his claim.

III – Extent of interest

2587. A person having an interest in the subject matter insured may insure on behalf and for the benefit of other persons interested as well as for his own benefit.

2588. The owner of insurable property has an insurable interest in respect of the full value thereof, notwithstanding that some third person may have agreed, or be liable, to indemnify him in case of loss.

§ 3.—*Measure of insurable value*

2589. 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.

2590. In insurance on ship, the insurable value is the value of the ship plus the money advanced for seamen's wages and any other disbursements incurred to make the ship fit for the voyage or adventure contemplated by the policy.

In insurance on freight, whether paid in advance or otherwise, the insurable value is the gross amount of the freight at the risk of the insured; in insurance on goods, the insurable value is the cost price of the goods plus the expenses of and incidental to shipping.

§ 4.—*Contract and policy*

I – Subscription

2591. The subscription of each insurer constitutes a distinct contract with the insured.

II – Kinds of contracts

2592. 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.

2593. A voyage contract insures the subject matter from one place to another or others and, where specified in the policy, at the place of departure.

2594. A time contract insures the insured for the period of time specified in the policy.

2595. A valued contract is a contract which specifies the agreed value of the subject matter insured.

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 subject matter insured whether the loss be total or partial, but is not conclusive for the purpose of determining whether there has been a constructive total loss.

2596. An unvalued contract is a contract which does not specify the value of the subject matter insured but, subject to the limit of the sum insured, leaves the insurable value to be subsequently ascertained.

Where a declaration of value is not made until after notice of loss or arrival, the contract must be treated as an unvalued contract as regards the subject matter of the declaration, unless the contract provides otherwise.

2597. 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.

2598. Subsequent declarations may be made by indorsement on the policy or in other customary manner but, where they pertain to goods to be dispatched or shipped, the declarations must, unless the policy provides otherwise, be made in the order of dispatch or shipment, state the value of the goods and comprise all consignments within the terms of the policy.

Omissions or erroneous declarations made in good faith may be rectified even after loss or arrival.

III – Content of the policy

2599. In addition to the name of the insurer and of the insured or of the person who effects the insurance on his behalf, a marine insurance policy must specify the subject matter insured and the risk insured against, the sums insured, the voyage or period of time covered by the insurance, the date and place of subscription, the amount and rate of the premiums and the dates on which they become due.

IV – Transfer of policy

2600. A marine policy may be transferred either before or after loss.

A marine policy may be transferred by indorsement on the policy or in other customary manner.

2601. Where the insured has alienated or lost his interest in the subject matter insured, and has not, before or at the time of so doing expressly or impliedly agreed to transfer the policy, he cannot subsequently transfer the policy.

2602. The alienation of the subject matter insured does not transfer the insurance except in the case of transmission by operation of law or by succession.

2603. The transferee may bring an action directly against the insurer but the insurer may make any defence arising out of the contract which he would have been entitled to make against the insured.

V – Evidence and ratification of the contract

2604. 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.

2605. Where a contract is effected in good faith on behalf of another person, that person may ratify it even after he is aware of a loss.

§ 5.—*Rights and obligations of the parties as regards the premium*

2606. The insurer is not bound to issue the policy until payment or tender of the premium.

2607. 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.

2608. 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.

2609. 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 received the premium from the broker.

2610. 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.

2611. 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.

2612. Where the subject matter insured, or part thereof, has never been imperilled, the premium, or a proportionate part thereof is returnable.

Where the subject matter has been insured "lost or not lost" and has arrived in safety at the time when the contract is concluded, the premium is not returnable unless, at such time, the insurer knew of the safe arrival.

2613. 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 a defeasible interest which is terminated during the currency of the risk, the premium is not returnable.

2614. 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.

2615. 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 an agent.

2616. Where a policy effected by a broker acknowledges the receipt of the premium, the acknowledgement is, in the absence of fraud, conclusive as between the insurer and the insured, but not as between the insurer and the broker.

§ 6.—*Disclosure and representations*

2617. 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 annulment of the contract.

2618. The insured must disclose to the insurer, before the contract is concluded, all circumstances known to him and which would materially influence a prudent insurer in fixing the premium, appreciating the risk or determining whether he will take it; every representation made by the insured must be true.

Circumstances requiring disclosure include any communication made to or information received by the insured.

2619. 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 knowledge or circumstances which are known to the insurer or as to which information is waived by the insurer.

2620. 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 a prudent insurer.

A representation as to a matter of expectation or belief is deemed true if it is made in good faith.

2621. Where an insurance is effected for an insured by an agent of the insured, the agent is subject to the same obligations as the insured as to representations and disclosures.

The agent cannot be held responsible for the non-disclosure of circumstances which come to the knowledge of the insured too late to be communicated to him.

2622. The insured and the insurer as well as their agents are deemed to know every circumstance which, in the ordinary course of business, they ought to know.

2623. A representation may be withdrawn or corrected before the contract is concluded.

2624. 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 as to losses or damage not connected with the risks misrepresented or not disclosed.

§ 7.—*Warranties*

2625. 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.

2626. A warranty must be exactly complied with whether or not it may materially influence the judgment of a prudent insurer.

Where a warranty is not complied with, the insurer is discharged from liability as from the date of the breach of warranty as to any loss which occurs subsequently; the insured cannot avail himself of the defence that the breach has been remedied, and the warranty complied with, before the loss.

2627. 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.

2628. A warranty may be express or implied. An express warranty may be in any form of words from which the intention to warrant can be inferred and must be written in the policy or contained in a document incorporated into the policy by way of a rider.

An express warranty does not exclude an implied warranty, unless it is inconsistent therewith.

2629. 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.

2630. There is no implied warranty as to the nationality of a ship, or that her nationality will not be changed during the risk.

2631. Where the subject matter insured is warranted well or in good safety on a particular day, it is sufficient if it be safe at any time during that day.

2632. 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 reasonably 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.

2633. In a time policy there is no implied warranty that the ship is seaworthy.

Where, with the privity 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.

2634. A ship is deemed to be seaworthy when she is reasonably fit in all respects to encounter the ordinary perils of the seas of the adventure insured.

2635. 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.

2636. There is an implied warranty that the adventure insured is not unlawful and that, so far as the insured can control the matter, the adventure will be carried out in a lawful manner.

§ 8.—*The voyage*

I – Commencement

2637. In a voyage contract there is an implied condition that if, when the contract is concluded, 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 concluded.

2638. Where the ship sails from a place other than the place of departure specified in the policy, the risk does not attach.

The same applies where the ship sails for a destination other than that specified in the policy.

II – Change of voyage

2639. There is a change of voyage from such time as, after the commencement of the risk, the determination to voluntarily change the destination specified in the contract is manifested.

The insurer is discharged from liability from the time of the change whether or not the course has in fact been changed when the loss occurs.

III – Deviation

2640. There is a deviation where the ship departs in fact from the course specified in the policy 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.

2641. Where several places of discharge are specified in the contract, the ship may proceed to all or any of them.

In the absence of any usage or sufficient cause to the contrary, the ship must proceed to such of the places as she goes to in the order specified in the contract; if she does not, there is a deviation.

2642. Where several places of discharge within a given area are referred to in the contract in general terms but are not named, the ship must, in the absence of any usage or sufficient cause to the contrary or of any lawful excuse, proceed to such of them as she goes to in their geographical order; if she does not, there is a deviation.

IV – Delay

2643. In the case of a voyage contract, the adventure must be prosecuted with reasonable dispatch and, if without lawful excuse it is not so prosecuted, the insurer is discharged from liability as from the time when the lack of dispatch becomes manifest.

V – Excuses for deviation or delay

2644. 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 subject matter insured.

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.

2645. When the cause excusing the deviation or delay ceases to operate, the ship must resume her course, and prosecute her voyage with reasonable dispatch.

2646. Where, by a peril insured against, the voyage is interrupted at an intermediate place under such circumstances as, apart from any special stipulation in the contract of affreightment, to justify the master in landing and reshipping the goods or other movables, or in transhipping them, and sending them on to their destination, the liability of the insurer continues.

§ 9.—*Notice of loss, constructive loss and actual loss*

2647. The notice of loss is governed by the rules applicable in non-marine damage insurance.

2648. The insurer is liable only for losses directly caused by a peril insured against.

The insurer is not liable for any such loss attributable to the wilful misconduct of the insured, but he is liable if it is attributable to the misconduct of the master or crew.

2649. 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, ordinary leakage and breakage or inherent vice or nature of the subject matter insured.

2650. 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.

2651. 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.

2652. There is an actual total loss where the insured is irretrievably deprived of the subject matter insured 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 after the lapse of a reasonable time.

2653. There is a constructive total loss where the subject matter insured is reasonably abandoned on account of its actual total loss appearing to be unavoidable, or because it could not be preserved from actual total loss without an expenditure which would exceed the value of the subject matter insured.

There is also a constructive total loss where the insured is deprived of the possession of the subject matter insured 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 property insured would be too costly.

2654. Recovery or repair is presumed to be too costly where the cost would exceed the value of the subject matter insured 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.

2655. 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.

2656. Where there is a constructive total loss, the insured may either treat the loss as a partial loss, or abandon the subject matter insured to the insurer and treat the loss as if it were an actual total loss.

2657. 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.

2658. Where goods that have reached their destination are incapable of identification by reason of obliteration of marks or otherwise, the insured has a right of action for partial loss only.

§ 10.—*Abandonment*

2659. Where the insured elects to abandon the subject matter insured to the insurer he must give notice of abandonment, except in the case of total actual loss. If he fails to do so, he has a right of action for partial loss only.

2660. There are no special requirements as to the form or substance of the notice of abandonment but the intention of the insured to abandon his interest unconditionally must be manifest.

2661. Notice of abandonment must be given with diligence after the receipt of reliable information of the loss.

Where the information is of a doubtful character the insured is entitled to a reasonable time to make inquiry.

2662. 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.

2663. The insurer need not give notice of the abandonment to his reinsurer.

2664. 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.

2665. 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.

2666. Where the insurer accepts the abandonment, he assumes, from the time of the loss, the interest of the insured in whatever may remain of the subject matter insured 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.

2667. 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 subject matter insured and all incidental rights and obligations, even if the insurer indemnifies him for the loss or damage which gave rise to the abandonment.

§ 11.—*Kinds of average losses*

2668. A particular average loss is a partial loss of the subject matter insured, caused by a peril insured against, and which is not a general average loss.

2669. Expenses incurred by or on behalf of the insured for the preservation or safety of the subject matter insured, other than general average and salvage charges, are called particular charges.

Particular charges are not included in particular average.

2670. 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 his agents, or any person employed for hire by them, for the 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.

2671. A general average loss is a loss caused by a general average act.

There is a general average act where any extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred in time of peril for the purpose of preserving the property imperilled in the common adventure.

2672. Where there is a general average loss, the party on whom it falls is entitled, subject to the conditions imposed by maritime law, to a rateable contribution from the other parties interested, and such contribution is called a general average contribution.

2673. 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.

2674. 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.

2675. Where the ship, freight, and cargo, or other movable property, or any two of them, are owned by the same insured, the liability of the insurer in respect of general average losses or contributions is to be determined as if those properties were owned by different persons.

§ 12.—*Measure of indemnity*

2676. 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.

2677. 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.

2678. 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 subject matter insured in the case of an unvalued policy.

2679. Where freight is lost, the measure of indemnity is such proportion of the sum fixed in the policy, where such is the case, or of the insurable value, otherwise, as the proportion of freight lost bears to the whole insured freight.

2680. 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.

2681. Where part of the goods or other movables 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.

2682. 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.

2683. Where different species of property are insured under a single valuation, the valuation must be apportioned over the different species in proportion to their respective insurable values; similarly, the insured value of any part of a species is such proportion of the total insured value of that species as the insurable value of the part bears to the insurable value of the whole.

Where the valuation of the insured value of different species of goods has to be apportioned, and particulars of the invoice value, quality, or description of each separate species cannot be ascertained, the division of the valuation may be made over the net arrived sound values of the goods.

2684. 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 subject matter is insured for its full contributory value; if the subject matter is not insured for its full contributory value or if only part of it is insured, the indemnity is reduced in proportion to the under-insurance.

The amount of any damage suffered by the insured by reason of a particular average loss which constitutes a deduction from the contributory value, and for which the insurer is liable, must be deducted from the insured value in order to ascertain what the insurer is liable to contribute.

The extent of the insurer's liability for salvage charges must be determined on the same principle.

2685. The measure of indemnity payable under a civil liability insurance contract is the amount paid or payable to third parties, up to the amount of insurance.

2686. Where there has been a loss in respect of any subject matter not expressly provided for in the provisions of this subsection, the measure of indemnity is ascertained, as nearly as may be, in accordance with those provisions.

2687. Where the property insured is warranted free from particular average, the insured cannot recover for a loss of part of the property insured 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 property insured.

2688. Where the subject matter insured is warranted free from particular average, either wholly or under a certain percentage, the insurer is nevertheless liable for salvage charges, and for particular charges and other expenses properly incurred pursuant to the provisions of the suing and labouring clause in order to avert a loss insured against.

A general average loss cannot be added to a particular average loss to make up the percentage specified in the contract. Likewise, no regard shall be had to particular charges and the expenses of and incidental to ascertaining the loss.

2689. Subject to the provisions of this subsection, the insurer is liable for successive losses, even though the total amount of such losses may exceed the sum insured.

Where, under the same policy, a partial loss which has not been repaired or otherwise made good is followed by a total loss, the insured can only recover in respect of the total loss.

The liability of the insurer under the suing and labouring clause is not affected.

2690. 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 policy are not recoverable under the suing and labouring clause.

2691. It is the duty of the insured and his agents, in all cases, to take such measures as may be reasonable for the purpose of averting or minimizing a loss.

§ 13.—*Miscellaneous provisions*

I – Subrogation

2692. Where the insurer pays for a total loss, either of the whole, or, in the case of goods, of any apportionable part of the subject matter insured, he becomes entitled to take over the interest of the insured in whatever may remain of the subject matter so paid for that he was insuring and he is thereby subrogated to all the rights and remedies of the insured in and in respect of the property insured as 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 title to the subject matter insured, 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 subject matter as from the time of the event causing the loss, up to the indemnity paid.

II – Double insurance

2693. 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.

2694. 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.

2695. Where the contract under which the insured claims is a valued policy, the insured must give credit as against the valuation for any sum received by him under any other policy without regard to the actual value of the subject matter insured.

Where the contract under which the insured claims is an unvalued policy, the insured must give credit, as against the full insurable value, for any sum received by him under any other policy.

2696. 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.

2697. Where the insured is over-insured by double insurance, each insurer is bound, as between himself and the other insurers, to contribute to the loss rateably to the amount for which he is liable under his contract.

If any insurer pays more than his proportion of the loss, he is entitled to recover the excess from the other insurers in the same manner as a surety who has paid more than his proportion of the debt.

III – Under-insurance

2698. Where the insured is insured for an amount less than the insurable value or, in the case of a valued policy, for an amount less than the policy valuation, the insured is deemed to be his own insurer in respect of the uninsured balance.

IV– Mutual insurance

2699. Where two or more persons mutually agree to insure each other against marine losses there is said to be a mutual insurance.

Mutual insurance is governed by the provisions of this section except those relating to the premium but such arrangement as may be agreed upon may be substituted for the premium.

V – Direct action

2700. In liability insurance, the amount of the insurance is affected exclusively to the payment of third persons injured by the insured. Third persons injured may sue the insurer directly, provided the insured is impleaded.

CHAPTER XVI

GAMING AND WAGERING

2701. 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.

2702. Where gaming and wagering contracts are not expressly authorized by law, the winning party cannot exact payment of the debt and the losing party cannot recover the sum paid.

Notwithstanding the foregoing, the losing party may recover the sum paid in cases of fraud or trickery or where the losing party is a minor or a person of full age under protection. In other cases, the court may also allow recovery of a part of the sum paid if it is of opinion that the commitment is immoderate in view of the condition and means of the losing party.

CHAPTER XVII

COMPROMISE

2703. Compromise 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 compromise is indivisible as to its object.

2704. No compromise may be made with respect to the condition or capacity of persons or to other matters of public order.

No compromise may be made in family matters, except with respect to the mode of payment of arrears of support.

2705. Compromise has, between the parties, the authority of a final judgment having become *res judicata*.

2706. Error of law is not a cause for annulling a compromise. Apart from such exception, a compromise may be annulled for the same causes as contracts in general.

2707. A compromise based on a title that is null is also null, unless the parties have expressly referred to and covered the nullity.

A compromise based on writings later found to be false is also null.

2708. A compromise based on a lawsuit is null if either party was unaware that the litigation had been terminated by a judgment having become *res judicata*.

2709. Where the parties have made a compromise on all matters between them, the subsequent discovery of documents of which they

were unaware at the time of the compromise does not constitute a cause for annulling the compromise, unlesss the documents were withheld by one of the parties or, to his knowledge, by a third person.

Notwithstanding the foregoing, the compromise 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.

2710. Errors, in a compromise, resulting from inadvertance such as errors of calculation or clerical errors may be corrected with the consent of the parties or, failing that, with the authorization of the court.

CHAPTER XVIII

ARBITRATION AGREEMENTS

2711. 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.

2712. Disputes over the status and capacity of persons, family matters or other questions of public order cannot be submitted to arbitration.

An arbitration agreement cannot be opposed on the ground that the rules applicable to settlement of the dispute are in the nature of rules of public order.

2713. An arbitration agreement must be evidenced in writing; it is deemed to be evidenced in writing if it is contained in an exchange of communications which attest to its existence or in an exchange of written proceedings in which its existence is alleged by one party and is not contested by the other party.

2714. A stipulation which places one party in a privileged position with respect to the designation of the arbitrators is null.

2715. 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.

2716. 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.

TITLE THREE

SPECIAL RULES GOVERNING THE CONSUMER CONTRACT

CHAPTER I

GENERAL PROVISIONS

SECTION I

NATURE OF THE CONTRACT AND SCOPE OF THE RULES GOVERNING IT

2717. A consumer contract is a contract whereby a natural person, the consumer, purchases, leases, borrows or otherwise obtains movable property or services for personal, family or household purposes, from another person, the professional, who offers such property or services in the ordinary course of an enterprise which he carries on, even if not for profit.

2718. Every consumer contract is subject to the special rules contained in this title and to the complementary rules prescribed by the regulations under the Consumer Protection Act; it is also subject to the rules contained in Titles One and Two, to the extent that they are compatible.

The rules applicable to a consumer contract are imperative; they are additional to any other legislative rule granting a right or remedy to the consumer, and the consumer can waive his rights under them only so far as the law permits.

2719. The following contracts are exempt from the rules contained in this title or prescribed by the regulations:

(1) contracts relating to the sale, lease or construction of an immovable;

(2) insurance and annuity contracts, other than contracts of credit concluded for the payment of insurance premiums, except as provided by law;

(3) contracts for the sale of electricity or gas concluded with Hydro-Québec or a distributor within the meaning of the Act respecting the Régie de l'électricité et du gaz;

(4) contracts concluded by a public service under an authorization of the Régie des services publics;

(5) contracts relating to transactions governed by the Securities Act, except contracts expressly exempt from the application of that Act.

2720. The following rules apply in computing any period of time under this title or the regulations:

(1) the day which marks the start of the period is not counted, but the terminal day is counted;

(2) holidays are counted, but when the last day is a holiday, the period is extended to the following day that is not a holiday;

(3) Saturday is considered a holiday, as are 2 January and 26 December.

SECTION II

FORMATION OF THE CONTRACT

§ 1.—*Conditions for the formation of the contract*

I — Consent

2721. The consent of a consumer to a consumer contract must always be assessed in view of the condition of the parties, the circumstances in which the contract is concluded and the benefits arising from the contract for the consumer.

2722. The consent of the consumer may be vitiated by lesion not only where the exploitation of the consumer by the professional entails a considerable disproportion between the prestations of the parties, but also where the obligation of the consumer is excessive, harsh or unconscionable.

II — Formal requirements for the contract that must be evidenced in writing

2723. Every consumer contract which, according to law, must be evidenced in writing is subject to the rules contained in this paragraph, unless it is established by notarial deed *en minute*.

2724. A promise to conclude a contract which must be evidenced in writing is binding on the consumer only from the time the final contract is recorded in a writing conforming to the rules contained in this paragraph.

The same applies to any offer, acceptance or other manifestation of will prior to the conclusion of the contract.

2725. A contract may be handwritten, typed or printed, but it must be drawn up in clear language and legibly, and at least in duplicate.

2726. Every contract and the appendant documents shall be drawn up in French unless the parties agree otherwise and expressly so declare in the contract.

Where they are drawn up both in French and in another language and there is a discrepancy between the texts, the interpretation most favourable to the consumer prevails.

2727. When the contract is duly drawn up, the professional shall sign each of the duplicate original copies, give them to the consumer and allow him to examine the contract and reflect upon its significance before signing.

The signature of the parties shall be affixed to each of the duplicate original copies, on the last page, below all the stipulations.

2728. In the case of a contract of variable credit for the use of a credit card, the issue of the card is equivalent to the signature of the professional and the use of the card by the consumer is equivalent to his signature.

2729. The signature of a person affixed to a contract is binding on a professional if the person is acting for him or if the professional has given reasonable grounds to believe that he is acting on his behalf.

2730. The contract is formed when the consumer has affixed his signature to each duplicate original copy of the contract.

2731. After the contract is formed, the professional shall give a duplicate original copy of the contract to the consumer and to his surety, if any, where the surety himself is a consumer.

§ 2.—*Sanction of conditions for the formation of the contract*

2732. Any consumer contract that does not conform to the conditions required for its formation may be annulled following an application by the consumer; the court shall grant the application unless the professional proves that the consumer suffered no damage from the fact that the conditions were not complied with.

The same rule applies to a contract that does not conform to a requirement as to form contained in this title or the regulations.

§ 3.—*Place of formation of remote parties contract*

2733. A consumer contract between remote parties is deemed to be concluded at the consumer's permanent residence as stated in the contract or, if the consumer has subsequently notified the professional of a change of residence, at his new residence.

A contract is concluded between remote parties where the parties are in the presence of one another neither at the time of the offer by the professional to one or more consumers, without any solicitation on their part, nor at the time of the acceptance of the offer by the consumer.

SECTION III

INTERPRETATION OF THE CONTRACT

2734. In case of doubt, a consumer contract shall be interpreted in favour of the consumer, as though he had no choice but to acquiesce in its terms.

SECTION IV

EFFECTS OF THE CONTRACT

§ 1.—*Certain obligations of the professional*

I — Principal obligation of the professional

2735. The principal obligation of a professional under a consumer contract is to deliver the property or provide the service that is the subject of the contract.

In an executory contract, the professional is considered to be performing his principal obligation when he begins to perform it in accordance with the contract.

II — Binding effect on the professional of certain clauses, statements and advertisements

2736. A professional who inserts in a contract or in an appendant document a clause which, under this title or the regulations, must be included in another contract or document is bound by the clause toward the consumer, if the consumer avails himself of it.

2737. The professional, manufacturer, distributor or supplier is bound, toward the consumer, by any statement or advertisement he makes regarding property or services which are the subject of a consumer contract and by the warranty relating to property or services mentioned in such a statement or advertisement.

He is also bound by any written or verbal statement made by his representative regarding such property or services.

III — Obligatory maintenance of trust account by professional

2738. A professional who receives a sum of money from a consumer before the conclusion of a contract shall deposit the sum in a trust account until he refunds it to the consumer at his request or until the conclusion of the contract.

If a professional collects a sum of money from a consumer under a solicited contract, he shall deposit the sum in a trust account until the expiry of the withdrawal period granted to the consumer or, where such is the case, until the consumer exercises his right of withdrawal.

2739. Where a professional receives a sum of money from a consumer pursuant to a contract under which the principal obligation of the professional is to be performed more than two months after the conclusion of the contract, he shall deposit the sum in a trust account until the performance of his principal obligation.

2740. A professional shall, at all times, have one and only one trust account in a bank or other financial institution carrying on business in Québec, to keep the sums of money he is required to hold in trust.

Upon opening the trust account, the professional shall inform the president of the Office de la protection du consommateur of where the account is kept and the account number.

2741. Every professional shall make the appropriate accounting entries in his books or registers with respect to all sums of money he receives from a consumer which he is required to hold in trust.

At the request of the consumer, the professional shall render an account to him of all sums he has received from him.

2742. Interest on sums paid into a trust account belongs to the professional.

2743. Where the professional is a legal person, its directors are jointly and severally liable with it for the sums required to be held in trust, unless they prove that they acted in good faith.

§ 2.—*Exigibility of obligations of the consumer*

2744. A consumer who is a party to a contract which is subject to the rules contained in this title respecting contracts that must be evidenced in writing is not bound to perform his obligations until he is in possession of a duplicate original copy of the contract.

Where the surety of a consumer is obligated under such a contract and is a consumer himself, the same rule applies to him.

2745. Where a professional solicits or has concluded a remote-parties contract, he cannot demand full or partial performance of the consumer's obligations or propose to collect any payment from him until he himself performs his principal obligation, unless he is so authorized by the president of the Office de la protection du consommateur upon furnishing security to him in the form and amount and on the terms and conditions prescribed by the regulations.

2746. No charge may be exacted or claimed from a consumer unless the amount is precisely stated in the contract.

§ 3.—*Prohibited clauses and stipulations*

2747. Any stipulation whereby a professional relieves himself of the consequences of his own acts or those of his representative is prohibited.

2748. Any stipulation whereby a professional reserves the right to decide unilaterally that the consumer has failed to perform one or another of his obligations or that a fact or a situation that may affect them has occurred is prohibited.

2749. Any penal clause or stipulation whereby a consumer agrees to suffer a penalty if he does not perform his obligations is prohibited.

2750. Any clause providing that the contract is wholly or partly subject to a law other than an Act of the Parliament of Canada or the Parliament of Québec is prohibited.

§ 4.—*Forfeiture of term clauses*

2751. Any clause which in effect requires the consumer in default to perform all or part of the remainder of his obligations before maturity is a clause of forfeiture of term and is subject to the rules contained in this title respecting forfeiture of the term of contracts of credit, adapted as required.

The same applies to any resolutory clause or any other clause which in effect terminates the contract following the default of the consumer.

§ 5.—*Warranties*

I — Warranties generally

2752. The warranties by which the professional and, in certain cases, the manufacturer, distributor or supplier are bound in respect of the property or services which are the subject of a consumer contract are either legal or conventional.

2753. Every writing evidencing a warranty, whether legal or conventional, shall be in clear language and shall state, in addition to the name and address of the warrantor,

(1) the nature and a description of the property or services under warranty and the precise duration of the warranty;

(2) information, conforming to the rules prescribed by the regulations, as to the applicable legal warranty and, separately, the contents of and any exclusions from the conventional warranty provided in addition to the legal warranty, where such is the case, and the cost of the conventional warranty to the consumer;

(3) the transferability of the warranty;

(4) the obligations of the warrantor in the event that the property under warranty is defective or that the services under warranty are improperly performed;

(5) the procedure to be followed by the consumer to obtain the carrying out of the terms of the warranty and, where applicable, the name and address of the person authorized to carry them out.

2754. Every contract under which a professional, otherwise than by way of a conventional warranty, binds himself toward a consumer to assume directly or indirectly all or part of the cost of repair or

replacement of a property or part of a property in the event that it is defective or malfunctions shall,

(1) if concluded on the occasion of the purchase of the property by the consumer, state the particulars required to be disclosed in written legal or conventional warranties and, clearly and separately, any additional warranty provided by the contract and any exclusions from the additional warranty;

(2) if not concluded on the occasion of the purchase of the property by the consumer, contain, in accordance with the rules prescribed by the regulations, the text of the pertinent provisions relating to the applicable legal warranties and a notice inviting the consumer to examine the contents of the conventional warranty before signing the contract.

2755. The duration of a warranty, whether legal or conventional, shall be extended for a period equal to the time during which the warrantor has the property or any part of it in his possession pursuant to a recall by the manufacturer, distributor or supplier or in order to carry out the terms of the warranty.

2756. The designation by a warrantor of a third person to carry out the terms of a legal or conventional warranty does not relieve him of his obligation of warranty toward the consumer.

2757. Heirs or particular successors of a consumer who acquire property under a warranty, whether legal or conventional, cannot avail themselves of the warranty in accordance with the rules contained in this title unless they themselves are consumers.

2758. A warranty, whether legal or conventional, pertaining to an automobile or a motorcycle adapted for operation on the public highway covers parts and labour.

Where, to carry out the terms of the warranty, the vehicle must be repaired, the professional or the manufacturer, distributor or supplier shall make the repairs himself or allow the consumer to have them made by a third person, and shall assume their cost in all cases, except as prescribed by the regulations; the professional or the manufacturer, distributor or supplier shall also assume, except as prescribed by the regulations, the cost of towing or breakdown service, whether effected by him or by a third person.

II — Certain legal warranties

2759. The professional shall warrant that the property or service which is the subject of the consumer contract conforms essentially,

at the time of formation of the contract, to what the consumer has a legitimate right to expect, in view of the nature and destination of the property or service, the statements and advertisements made regarding it, the information respecting it given to him by the professional and the contractual or legal provisions relating to it.

The manufacturer, distributor or supplier is bound by the same warranty toward the consumer, even if the consumer is a subsequent purchaser of the property.

2760. Where the subject of a contract is property which by its nature requires maintenance, the professional and the manufacturer, distributor or supplier shall give a warranty to the consumer that replacement parts and repair service will be available for a reasonable time after the formation of the contract.

They are not bound to give such a warranty, however, if, before the formation of the contract, they notify the consumer in writing in the language of the contract that they do not supply replacement parts or provide repair service.

2761. The rules contained in this paragraph in no way prevent the professional or the manufacturer, distributor or supplier from providing a more advantageous warranty to the consumer.

III — Conventional warranties

2762. Neither the professional nor the manufacturer, distributor or supplier may make the validity of a conventional warranty provided to the consumer conditional upon the consumer's using a product identified by brand name, unless the product is supplied to the consumer free of charge, the property under warranty cannot function properly without it or the warranty is the subject of a separate onerous contract.

2763. Where the validity of the conventional warranty provided by the manufacturer, distributor or supplier is conditional upon the property or service being supplied by a person certified by him, any person who supplies the property or service without being so certified assumes the warranty alone and at his own expense, unless he notifies the consumer in advance, in writing and in the language of the contract that the warranty will not be valid.

2764. Exclusions from a conventional warranty must be clearly stated in separate and successive clauses of the writing evidencing the warranty.

Any exclusion from the warranty not stated in this manner is null.

2765. No charge may be exacted from the consumer for the carrying out of the terms of a conventional warranty unless it is expressly stipulated and the precise amount is fixed in the writing evidencing the warranty.

2766. The warrantor shall assume the actual cost of transportation or shipping incurred in carrying out the terms of a conventional warranty unless otherwise stipulated in the writing evidencing the warranty.

2767. Any written warranty of the professional or the manufacturer, distributor or supplier, even if not written in the contract, is binding on him as though it were written there.

CHAPTER II

SPECIAL PROVISIONS REGARDING CERTAIN CONSUMER CONTRACTS

SECTION I

SOLICITED CONTRACT

§ 1.—*Nature of the contract*

2768. A contract concluded with a consumer elsewhere than at the address of the professional, or following the solicitation of that particular consumer by the professional elsewhere than at that address, under which the value of the consumer's obligations exceeds $ 25, is a solicited contract.

2769. In addition to the exclusions prescribed by the regulations, a contract solicited at the address of the professional and concluded at the address of the consumer at his express request is not a solicited contract.

§ 2.—*Form of the contract*

2770. Every solicited contract shall be evidenced in writing and state, in addition to the particulars prescribed by the regulations,

(1) the number of the professional's solicitation permit issued under the Consumer Protection Act;

(2) the names and addresses of the parties;

(3) the date and place of signing of the contract;

(4) a description of the subject of the contract including, in the case of a contract relating to property, the model year or any other distinguishing mark;

(5) the cash price of each item of property or service;

(6) the duties chargeable under any Act of the Parliament of Canada or the Parliament of Québec;

(7) the total amount the consumer is required to pay under the contract;

(8) the right granted to the consumer to withdraw from the contract at his sole discretion within ten days after the day on which each of the parties is in possession of a duplicate original copy of the contract.

2771. In every case, the professional shall attach a withdrawal form conforming to the model contained in Schedule 1 to the Consumer Protection Act, to the duplicate original copy of the contract he furnishes to the consumer.

§ 3.—*General effects of the contract*

2772. The professional can neither demand nor collect any payment whatever from the consumer before the expiry of ten days after the day on which each of the parties is in possession of a duplicate original copy of the contract nor until the consumer receives the property or service.

§ 4.—*Right of withdrawal*

2773. The consumer may, at his sole discretion, withdraw from the contract without charge or penalty within ten days after the day on which each of the parties is in possession of a duplicate original copy of the contract.

2774. To exercise his right of withdrawal, the consumer must either return the property to the professional or send to him the withdrawal form attached to the contract or a notice in writing that he wishes to withdraw from the contract.

The contract is null from the return of the property or from the sending of the form or notice.

2775. Within ten days after the exercise of the right of withdrawal, each party shall restore to the other what he has received under the contract.

2776. The professional alone shall assume the cost of restitution of the prestations.

He shall also assume the risk of loss or deterioration, even by superior force, of the property he is required to restore until he has restored it, and of the property required to be restored to him until the expiry of ten days from the exercise of the right of withdrawal.

2777. The consumer cannot withdraw from the contract where, as a result of an act or fault for which he is responsible, he is unable to restore the property in the condition in which he received it.

SECTION II

USED VEHICLE SALES CONTRACT

§ 1.—*Nature of the contract and scope of the rules governing it*

2778. A used vehicle sales contract is a contract of sale the subject of which is an automobile or motorcycle adapted for operation on the public highway which has been used for any purpose other than its delivery or preparation for delivery by the professional or the manufacturer, distributor or supplier.

Notwithstanding the foregoing, a contract of sale resulting from the consumer's exercising his option to purchase under a contract whereby he enjoyed the use of a new automobile or motorcycle is not a used vehicle sales contract.

2779. A person who, in return for payment, acts as an intermediary between consumers in the sale of used vehicles is under the same obligations as a professional pursuant to this section.

§ 2.—*Formalities prior to sale*

2780. The professional shall affix a label to each used vehicle he offers for sale.

In the case of an automobile, the label must be so affixed that it may be read entirely from outside the vehicle.

2781. The label shall disclose, in addition to the price at which the vehicle is offered,

(1) the number of miles or kilometres registered on the odometer and the number of miles or kilometres actually travelled by the vehicle, if different from that registered on the odometer;

(2) the model year assigned to the vehicle by the manufacturer, distributor or supplier, the serial number, make and model of the vehicle and the cubic capacity of its engine;

(3) where such is the case, the fact that the vehicle has been used as a taxicab, driving-school vehicle, police vehicle, ambulance, rental vehicle, courtesy vehicle or demonstrator, and the identity of any enterprise or public body having owned or leased the vehicle;

(4) any repairs made to the vehicle since it has been in the possession of the professional;

(5) the duration and terms of the warranty provided by the professional;

(6) the fact that a certificate of mechanical inspection issued in accordance with subsection 4 of section 157 of the Highway Safety Code will be given to the purchaser upon the signing of the contract;

(7) the fact that the professional is required, at the request of the consumer, to furnish him with the name and telephone number of the last owner of the vehicle, other than the professional;

(8) where such is the case, the fact that the vehicle was damaged in an accident.

For the purposes of subparagraphs 1, 3 and 8 of the first paragraph, the professional may rely on a written declaration of the last owner of the vehicle unless he has reasonable grounds to believe that it is false.

2782. The label may also, at the discretion of the professional, disclose the defects in the vehicle, with an estimate of the cost of repair.

2783. The label shall be appended to the contract.

Every disclosure on the label forms an integral part of the contract and is binding on the professional, except the price at which the vehicle is offered and the terms of the warranty, which may be changed before the conclusion of the contract.

§ 3.—*Form of the contract*

2784. A used vehicle sales contract shall be evidenced in writing and state, in addition to the number of the dealer's licence issued to the professional under section 157 of the Highway Safety Code, the date and place of signing of the contract, the names and addresses of the parties and the price of the vehicle.

The contract shall also state the duties chargeable under any Act of the Parliament of Canada or the Parliament of Québec, the total amount the consumer is required to pay under the contract and the terms of the warranty.

§ 4.—*Warranty*

2785. The sale of a used automobile entails, by operation of law, a warranty that the vehicle will remain in good working order for the period or operating distance specified below, according to the time between the date on which vehicles of the same model and model year were first marketed by the manufacturer, distributor or supplier, and the date of the sale:

(1) six months or 10 000 kilometres, whichever occurs first, where the time between the date of marketing and the date of the sale is not over two years, provided the automobile has not travelled over 40 000 kilometres;

(2) three months or 5 000 kilometres, whichever occurs first, where paragraph 1 is not applicable and the time between the date of marketing and the date of the sale is not over three years, provided the automobile has not travelled over 60 000 kilometres;

(3) one month or 1 700 kilometres, whichever occurs first, where neither paragraph 1 nor paragraph 2 is applicable and the time between the date of marketing and the date of the sale is not over five years, provided the automobile has not travelled over 80 000 kilometres.

2786. The sale of a used motorcycle entails, by operation of law, a warranty that the motorcycle and its accessories will remain in good working order for the period specified below, according to the time between the date on which motorcycles of the same model and model year were first marketed by the manufacturer, distributor or supplier and the date of the sale:

(1) two months, where the time between the date of marketing and the date of the sale is not over two years;

(2) one month, where the time between the date of marketing and the date of the sale is over two years but not over three years.

2787. The warranty takes effect upon delivery of the vehicle.

2788. The warranty covers parts and labour but, apart from the accessories prescribed by regulation, it does not cover normal maintenance service of the vehicle or the replacement of parts required for maintenance, interior upholstery or exterior decorative items, or damage resulting from abuse of the vehicle by the consumer.

2789. Where a professional has disclosed the defects in a vehicle offered for sale on the label affixed to the vehicle, with an estimate of the cost of repairing them, he warrants only that the repairs can be made for the estimated price; he is bound by no other warranty as to the defects disclosed on the label.

SECTION III

REPAIR CONTRACT

§ 1.—*Nature of the contract and other general provisions*

2790. A repair contract subject to this section is a contract for work whereby a professional undertakes to carry out repair work for and at the expense of a consumer on an automobile or motorcycle adapted for operation on the public highway or on any of the following household appliances: a kitchen range, a refrigerator, a freezer, a dishwasher, a clothes washer, a clothes dryer or a television set.

Every person who carries out repair work on such a vehicle or appliance at the expense of a consumer is deemed to be a professional for the purposes of this section even if he carries out such work only occasionally.

2791. Every professional who carries out repair work on automobiles or motorcycles must, in accordance with the requirements prescribed by the regulations,post a sign in a conspicuous place in his establishment informing consumers of the principal provisions of this section.

2792. A professional may engage a subcontractor to carry out repair work on a vehicle or appliance entrusted to him by a consumer, but he retains all his obligations toward the consumer under this section as though he carried out the work himself.

§ 2.—*Estimate*

2793. A professional is required to furnish to the consumer, in advance, and in writing, an estimate of the repair work to be carried out on his vehicle or appliance, unless the consumer writes out and signs a waiver.

He cannot make any charge for the estimate unless he advises the consumer in advance of the amount of the charge.

2794. Where the making of an estimate of the repair work to be carried out on an automobile or motorcycle requires the dissassembly of certain components of the vehicle, the charge for the estimate, if any, shall include the cost of replacement, including labour, of any part rendered unusable by the dissassembly, as well as the cost of reassembly should the consumer decide not to have the work done.

2795. The estimate shall state, in addition to the names and addresses of the parties, the make, model and registration number of the vehicle or a description of the household appliance, the nature and total price of the repair work to be carried out, the part to be installed, specifying whether it is new, used, rebuilt or reconditioned, and the date and duration of the estimate.

2796. Once accepted by the consumer, the estimate is binding on the professional and no further charge may be made to the consumer for the repair work included in the estimate.

2797. The professional shall not carry out any repair work not included in the estimate accepted by the consumer before obtaining express authorization from the consumer.

The authorization may be written or verbal; in case of a verbal authorization, the professional shall record it on the estimate, with the date and time, the name of the person having given it and, where such is the case, the telephone number where the person was reached.

2798. Acceptance of the estimate by the consumer or payment by him does not prejudice his remedy against the professional based upon the absence of prior authorization, bad workmanship or the price exceeding, as the case may be, the price stated in the estimate or the sum total of the price stated in the original estimate and the price agreed when the change was authorized.

§ 3.—*Bill*

2799. After carrying out the repairs, the professional shall give the consumer a bill stating, in addition to the names and addresses of the parties,

(1) the make, model and number of the vehicle or a description of the appliance;

(2) in the case of a vehicle, the date of delivery to the consumer and the number of miles or kilometres registered on the odometer at that date;

(3) the repairs carried out, the number of hours billed, the hourly rate and the total cost of labour;

(4) any part installed, specifying whether it is new, used, rebuilt or reconditioned, and its cost;

(5) the terms of the warranty;

(6) the duties chargeable under any Act of the Parliament of Canada or the Parliament of Québec;

(7) the total amount the consumer is required to pay for the repairs.

§ 4.—*Handing over of parts*

2800. The professional, unless expressly dispensed therefrom by the consumer when requesting the repairs, shall hand over every replaced part to the consumer at the time that he takes delivery of his vehicle or appliance, unless the part was replaced with a rebuilt or reconditioned part or is covered by a warranty contract under which the professional is required to return the part to the manufacturer, distributor or supplier of the vehicle or appliance.

§ 5.—*Right of retention*

2801. A professional cannot retain a vehicle or appliance on which he has carried out repair work if he failed to give the consumer an estimate of the repairs that were to be carried out.

Nor can he retain it if the price of the repair work exceeds, as the case may be, the price stated in the estimate or the sum total of the price stated in the original estimate and the price agreed when the change was authorized, provided, however, that the consumer is prepared to pay an amount equal to the stated price or to the sum total of the stated price and agreed price.

§ 6.—*Warranty*

2802. Repair work carried out by a professional is warranted for three months or 5 000 kilometres, whichever occurs first, in the case of an automobile, one month in the case of a motorcycle and three months in the case of a household appliance.

2803. The warranty takes effect upon the delivery of the vehicle or appliance and applies to any repair subsequent to a first repair.

The warranty covers parts and labour but does not cover damage resulting from abuse of the vehicle or appliance by the consumer.

SECTION IV

PERSONAL IMPROVEMENT CONTRACT

§ 1.—*Nature of the contract*

2804. A personal improvement contract is an executory contract for work the object of which is to provide instruction, training or assistance for the purpose of developing, maintaining or improving the health, appearance, skills, qualities, knowledge or intellectual, physical or moral faculties of a consumer, to assist a consumer in establishing, maintaining or developing personal or social relations, or to allow a consumer to use property to attain any such object.

Every contract between a consumer and a professional who operates a health studio, namely, an enterprise providing property or services designed to help a person improve his physical fitness through a change in weight, weight control, treatment, diet or exercise, is a personal improvement contract.

2805. A contract between a consumer and a person who provides property or services without demanding or receiving any remuneration, directly or indirectly, is not subject to this section, nor is a contract between a consumer and

(1) a school board or a school under the authority of a school board, a general and vocational college, a university or a university faculty, school or institute administered by an entity separate from that which administers the university;

(2) an institution declared to be of public interest or recognized for the purpose of grants in accordance with the Act respecting private education, for the subsidized teaching it provides;

(3) a government department or a school administered by the Government or a government department;

(4) a municipality;

(5) a member of a professional corporation governed by the Professional Code, provided the contract is concluded in the practice of his profession;

(6) a person or class of persons prescribed by the regulations.

§ 2.—*Form of the contract*

2806. Every personal improvement contract must be evidenced in writing and state, in addition to the names and addresses of the parties and the date and place of signing of the contract,

(1) the professional's permit number, where the contract is between a consumer and a professional who operates a health studio;

(2) the nature and a description of the subject of the contract and the date on which the professional is to begin to perform his obligation;

(3) the duration of the contract and the place where it is to be performed;

(4) the number of hours, days or weeks over which the services are to be provided and the hourly, daily or weekly rate agreed between the parties, where the contract is not a contract between a consumer and a professional who operates a health studio;

(5) the total amount the consumer is required to pay under the contract and the agreed terms and conditions of payment;

(6) any other information prescribed by the regulations or, where applicable, by the Act respecting private education or the regulations thereunder.

2807. The professional shall attach to the duplicate original copy of the contract he furnishes to the consumer a withdrawal form conforming to the model contained in Schedule 8 to the Consumer Protection Act or, in the case of a contract with a professional who operates a health studio, conforming to the model contained in Schedule 9 to that Act.

2808. The duration stipulated in a contract with a professional who operates a health studio cannot exceed one year.

The duration stipulated in any other personal improvement contract may be longer or undetermined, but the hourly, daily or weekly rate must be the same for the entire agreed duration of the contract.

§ 3.—*General effects of the contract*

2809. The professional cannot collect any payment from the consumer before beginning to perform his obligation, except the registration fee authorized by the regulations.

Nor can he collect payment of the consumer's obligation by way of fewer than two approximately equal instalments, payable at the beginning of approximately equal divisions of the duration of the contract.

§ 4.—*Right of withdrawal*

2810. The consumer may, at his discretion, withdraw from the contract without charge or penalty so long as the professional has not begun to perform his principal obligation.

The consumer may also withdraw from the contract at a later time on payment of the stipulated charge and penalty, if any, unless the contract is with a professional who operates a health studio, in which case the consumer may withdraw from the contract only within a period equal to one-tenth of the stipulated duration of the contract, computed from the time that the professional begins to perform his principal obligation.

2811. To exercise his right of withdrawal, the consumer must send to the professional the withdrawal form attached to the contract or a notice in writing that he wishes to withdraw from the contract.

The contract is null from the sending of the form or notice.

2812. Where the right of withdrawal is exercised after the professional begins to perform his principal obligation, the professional cannot exact any payment from the consumer other than the price of the services rendered to him, computed at the hourly, daily or weekly rate stipulated in the contract and, as a penalty, the lesser of $50 and a sum not exceeding ten per cent of the price of the services that have not been rendered to him.

Notwithstanding the foregoing, in the case of a contract with a professional who operates a health studio, the professional cannot on any account exact from the consumer a sum exceeding ten per cent of the total price stipulated in the contract.

2813. Within ten days after the exercise of the right of withdrawal, the professional shall restore to the consumer the sum of money he owes him.

§ 5.—*Accessory contract*

I — Nature of the contract and other general provisions

2814. Every contract for the sale of property under which the total amount of the consumer's obligation exceeds $100 and which is entered into in connection with the conclusion or performance of a personal improvement contract is an accessory contract.

2815. Every contract for the lease of property or for services entered into in connection with the conclusion or performance of a personal improvement contract is subject, if not otherwise contemplated by this section, to the rules governing the principal contract, adapted as required.

2816. No professional may make the conclusion or performance of a personal improvement contract conditional upon the conclusion of an accessory contract between himself and the consumer.

II — Form of the contract

2817. Every accessory contract shall be evidenced in writing and state, in addition to the information prescribed by the regulations,

(1) the names and addresses of the parties;

(2) the date and place of signing of the contract;

(3) a description of the subject of the contract, including the model year, where applicable, or any other distinguishing mark;

(4) the cash price of each item of property;

(5) the duties chargeable under any Act of the Parliament of Canada or the Parliament of Québec;

(6) the total amount the consumer is required to pay under the contract.

2818. The professional shall attach to the duplicate original copy of the contract he furnishes to the consumer a withdrawal form conforming to the model contained in Schedule 10 to the Consumer Protection Act.

III — Right of withdrawal

2819. The consumer may, at his discretion, withdraw from an accessory contract without charge or penalty within ten days after the day on which the property is delivered or on which the professional begins to perform his obligation under the principal contract, whichever occurs last.

2820. To exercise his right of withdrawal, the consumer must return the property to the professional or send to him the withdrawal form attached to the contract or a notice in writing that he wishes to withdraw from the contract.

The contract is null from the return of the property or the sending of the form or notice.

2821. Within ten days after the exercise of the right of withdrawal, each party shall restore to the other what he has received under the contract.

2822. The professional alone shall assume the cost of restitution of the prestations.

He shall also assume the risk of loss or deterioration, even by superior force, of the property that is the subject of the contract until the expiry of ten days after the day on which the property is delivered or on which the professional begins to perform his obligation under the principal contract, whichever occurs last.

2823. Where the consumer withdraws from the principal contract, he may also withdraw from the accessory contract, even if the time for doing so has expired, by returning the property to the professional within ten days after exercising his right of withdrawal in respect of the principal contract.

Notwithstanding the foregoing, the consumer cannot withdraw from the accessory contract if he has been in possession of the property for two months or for one-third of the duration of the principal contract, whichever is less.

2824. The consumer cannot withdraw from an accessory contract if, as a result of an act or fault for which he is responsible, he is unable to restore the property in the condition in which he received it.

SECTION V

CONTRACT OF CREDIT

§ 1.—*Rules applicable to all contracts of credit*

I — Nature of the contract and certain kinds of contracts

2825. Every contract whereby, in consideration of a charge, a consumer is granted the right to delay the performance of his obligation under the contract is considered to be a contract of credit.

Contracts of credit include contracts for the loan of money, contracts of variable credit and all other contracts involving credit, such as instalment sales.

2826. A contract of sale with a repurchase option in favour of the consumer requiring him to pay to the professional, for any consideration whatever, a total sum in excess of the purchase price paid by the professional is deemed for the purposes of this title to be a contract for the loan of money.

2827. A contract of variable credit is a contract whereby credit is extended in advance to a consumer who may draw on it, from time to time, in whole or in part, in accordance with the terms of the contract, or any contract which allows the consumer to obtain advances of money or to purchase property or services from time to time, at his discretion, where the contract provides for the payment of additional sums if the consumer does not pay his obligation.

Contracts of variable credit include contracts for the use of what are called credit cards, credit accounts, revolving credit, open accounts or lines of credit and any other contract of similar nature.

II — Form of contract

1. *General provision*

2828. Every contract of credit, except a contract for the loan of money payable on demand, must be evidenced in writing.

It shall contain, in addition to the particulars prescribed by the regulations, those set out in Schedule 3, 4 or 7 to the Consumer Protection Act, according as it is a contract for the loan of money, a contract of variable credit or another contract involving credit.

2. Disclosure of the consumer's total obligation and its components

2829. Every contract of credit shall disclose the total obligation of the consumer, namely, the aggregate of the net capital, the credit charge he is required to pay and any down payment he has made.

2830. The net capital owed by the consumer is, in the case of a contract for the loan of money, the sum actually received by him or paid into or credited to his account by the professional and, in the case of a contract involving credit or a contract of variable credit, the sum for which credit is actually extended.

The net capital does not include the credit charge or any component thereof.

2831. The credit charge is the aggregate of the sums the consumer is required to pay under the contract, in excess of the net capital owed by him in the case of a contract for the loan of money or a contract of variable credit or, in the case of any other contract involving credit, in excess of the net capital owed by him and any down payment he has made, namely, the sum of money, the value of the negotiable instrument payable on demand or the agreed value of property given by him on account at the time of the conclusion of the contract.

2832. The credit charge shall be determined as the sum of its components, namely, but not restrictively, the following:

(1) the sum of money claimed as interest from the consumer by the professional;

(2) the premium for insurance contracted by the consumer on his own initiative or at the request of the professional, except an automobile insurance premium;

(3) the rebate;

(4) the administration charges, brokerage fees, appraiser's fees and deed costs incurred by the professional, as well as the cost incurred to obtain a credit report regarding the consumer;

(5) contract subscription or renewal fees;

(6) the commission of the professional;

(7) the value of the rebate or discount to which the consumer is entitled if he pays cash;

(8) the duties chargeable under any Act of the Parliament of Canada or the Parliament of Québec, charged because of the credit extended.

2833. The professional shall state the credit charge in dollars and cents and indicate that it applies to the entire duration of the contract in the case of a contract for the loan of money or a contract involving credit or , in the case of a contract of variable credit, to the payment period of not more than thirty-five days covered by each statement of account.

2834. The professional shall state the credit rate, namely, the credit charge expressed as an annual percentage, in the manner and according to the method of computation prescribed by the regulations.

The credit rate under a contract of variable credit shall be computed without taking into account such credit charge components as contract subscription or renewal fees or the value of the rebate or discount to which the consumer is entitled if he pays cash.

2835. Any contract of credit other than a contract of variable credit shall stipulate only one credit rate.

III — Performance of contract

1. *Payment in general*

2836. A contract of credit shall provide for only one deferred payment during each payment period of not more than thirty-five days.

The date of the first payment by the consumer may be fixed as the parties wish, but if it is over thirty-five days after the time of formation of the contract, no credit charge accrues from that time until the beginning of the period fixed for that payment.

Save in connection with a contract of variable credit, deferred payments must be equal, except the last, which may be smaller.

2837. Where the principal obligation of the professional is performed more than seven days after the formation of the contract, no credit charge accrues before the date of performance and the professional cannot demand any payment from the consumer before that date.

2838. A contract to which a consumer who earns his principal income from an occupation which he carries on for not more than eight months per year is a party is exempt from the application of article

2836, provided that the contract states the name of the consumer and the occupation which is his principal source of income and contains his declaration, signed separately, to the effect that his principal income is seasonal.

The professional may act on the strength of such a declaration, unless he knows it to be false.

2839. A contract for the loan of money under which the loan is payable on demand, the date of maturity is not fixed, the amount of the payments is not fixed or the consumer's total obligation is payable in full on a fixed date is exempt from the application of article 2836, subject to the conditions prescribed by the regulations.

2840. No credit charge may be exacted from a consumer under a contract for the loan of money except on such part of the net capital as he has received from the professional and such part as has been paid into or credited to his account by the professional.

2841. The credit charge exigible from the consumer shall be computed according to the actuarial method prescribed by the regulations.

The credit charge under a contract of variable credit shall be computed without taking into account such credit charge components as contract subscription or renewal fees or the value of the rebate or discount to which the consumer is entitled if he pays cash.

2842. The professional cannot exact, on any sum owed by the consumer, a credit charge computed at a higher credit rate than that computed pursuant to this title or that stipulated in the contract, whichever is lower.

2843. A consumer who has used the net capital from a contract for the loan of money to make full or partial payment for the purchase or lease of property or the supply of services may, if the lender of money and the selling, leasing or supplying professional regularly cooperate with a view to the granting of loans of money to consumers, plead against the lender of money any ground he may urge against the selling, leasing or supplying professional.

Where the surety of the consumer is bound by the obligations under such a contract, he also may plead such a ground, provided he is a consumer himself.

2844. Where legal proceedings intervene between the consumer and the selling, leasing or supplying professional, the court, on the motion of the consumer, may order suspension of repayment of the loan of money until final judgment is rendered.

In rendering final judgment, the court shall indicate which party is required to pay the credit charge accrued during suspension of repayment of the loan.

2. Payment before maturity and forfeiture of term

2845. The consumer may make full or partial payment of his obligation before maturity.

The outstanding balance at any time is the aggregate of the net capital owed by the consumer and the credit charge computed according to the actuarial method prescribed by the regulations.

2846. The professional may avail himself of a clause in the contract whereby the consumer has undertaken to pay, in the event of default, all or part of the remainder of his obligation before maturity.

To do so, he shall so inform the consumer by means of a written notice drawn up in the language of the contract and conforming to the model contained in Schedule 2 to the Consumer Protection Act, accompanied with a statement of account containing the information prescribed by the regulations.

2847. The consumer may remedy his default within thirty days after the day he receives the notice and statement of account from the professional.

Otherwise, the remainder of his obligation becomes payable on the expiry of the period of thirty days, unless the court, on a motion of the consumer served before the expiry of the period, makes such changes in the terms and conditions of payment as it deems reasonable or authorizes the consumer to return the property to the professional.

2848. The motion of the consumer shall be heard and decided by preference, taking into account the total amount he is required to pay under the contract, the sums he has already paid, the value of the property at the time of the default, the outstanding balance, his ability to pay his obligations out of his income and the reasons for the default.

2849. Where the court authorizes the consumer to return the property to the professional, the contractual obligation of the consumer is extinguished and the professional is not required to restore the amount of the payments he has received under the contract.

3. *Statement of account*

2850. At the prescribed time, the professional shall send to the consumer a statement of account in prescribed form containing the information prescribed by the rules contained in this paragraph and by the regulations.

2851. A consumer, on discovering a billing error in the statement of account sent to him by the professional, may send a written notice to the professional stating his identity, the nature of the error and the sum involved, if any, as well as his grounds for believing the error exists.

2852. Within sixty days after the sending of a written notice by a consumer, the professional shall inform him that the billing error, including any erroneous credit charge, has been corrected, or that he refuses to amend the statement of account, explaining his grounds for refusal; in the latter case, the professional shall furnish a copy of the documentary evidence in support of his refusal to the consumer, at his request, free of charge.

If the professional fails to inform the consumer or to comply with his request for documentary evidence in due time, he loses his right to claim the sum disputed in the written notice or any related credit charge from the consumer.

4. *Discharge, and return of vouchers*

2853. When the consumer discharges his obligation in full, the professional shall give him a discharge and return to him every object or document received as acknowledgement of or security for the obligation.

IV — Amendments to contract

2854. If the parties to a contract of credit wish to amend it, thereby increasing the credit rate or credit charge, they shall evidence the amendment in a separate writing.

The writing shall identify the contract and describe the amendment; it shall also state, as before and after the amendment, the net capital,

the credit rate and the credit charge, the total amount of the consumer's obligation, and the terms and conditions of payment.

2855. The consolidation of debts owing to the same professional shall be evidenced in a new contract.

The new contract shall, separately and distinctly in respect of each consolidated contract, identify the original contract and state the sum required of the consumer to discharge his obligation under that contract before maturity.

2856. Where the parties to a contract for the consolidation of debts wish to amend it, the writing evidencing the amendment shall maintain, separately and distinctly in respect of each consolidated contract, the particulars required in the consolidation of debts contract.

2857. Where the parties to a contract of credit under which either the date of maturity or the amount of the payments is undetermined wish to amend the contract, they are exempt from the obligation to conclude a new contract, subject to the conditions prescribed by the regulations.

The same exemption applies, subject to the same conditions, where the amendments are merely designed to correct a clerical error in the contract, with the agreement of both parties.

V — Right of withdrawal

2858. The consumer may, at his discretion, withdraw from a contract for the loan of money or a contract involving credit without charge or penalty within two days after the day on which each of the parties is in possession of a duplicate original copy of the contract.

2859. To exercise his right of withdrawal, the consumer must return to the assigning professional, to the assignee or to their representatives the net capital or, in the case of a contract involving credit, the property that is the subject of the contract, if the consumer received the capital or property at or before the time that each of the parties came into possession of a duplicate original copy of the contract; otherwise, the consumer shall either return the net capital or the property to the assigning professional, the assignee or their representatives or send to them a notice in writing that he wishes to withdraw from the contract.

The contract is null from the return of the net capital or property, or from the sending of the notice.

2860. Where the right of withdrawal is exercised, each party shall, as soon as possible, restore to the other what he has received under the contract.

2861. The professional alone shall assume the cost of restitution of the prestations.

He shall also assume the risk of loss or deterioration, even by superior force, of the property that is the subject of the contract, until the expiry of the withdrawal period of two days granted to the consumer.

2862. The consumer cannot withdraw from the contract if, as a result of an act or fault for which he is responsible, he is unable to restore the property in the condition in which he received it.

VI — Certain operations incidental to contracts of credit

1. *Assignment of certain property or rights*

2863. A negotiable instrument signed at the time of the conclusion of a contract of credit to acknowledge deferred payments forms part of the contract and neither the instrument nor the contract may be assigned separately by the professional or any subsequent assignee.

2864. The assignee of a debt owing to a party to a contract with a consumer cannot have greater rights than the assignor and he is jointly and severally liable with the assignor for the performance of the assignor's obligations up to the amount of the debt at the time of the assignment or, if he reassigns the debt, up to the price of the latter assignment.

The surety of the consumer, provided he is a consumer himself, has the same rights and remedies as the consumer under this article.

2865. The assignee of an instalment sale contract shall not consolidate it into a contract for the loan of money or substitute such a contract for it except at the initial request of the consumer.

The consolidated or substitute contract shall contain the statement prescribed by the regulations.

2. *Contracting of insurance and other operations relating to insurance*

2866. No person may refuse to conclude a contract of credit with a consumer on the ground that the consumer does not contract an

individual insurance policy through him or does not participate, through him, in a group insurance policy.

2867. If the formation of a contract of credit is conditional upon the contracting of insurance, the consumer may fulfil the condition by way of insurance he has already contracted.

The professional shall inform the consumer of that right in the manner prescribed by the regulations.

2868. Every person who, in connection with a contract of credit, contracts group insurance on the life or health of a consumer shall, in accordance with the Act respecting insurance, furnish the consumer with an application form or a certificate of insurance.

If he contracts any other insurance, he shall, within thirty days thereafter, furnish the consumer with a certificate of insurance and a copy of the application for insurance.

§ 2.—*Special rules applicable to the contract of variable credit*

I — Credit card

2869. No person may issue or send a credit card to a consumer unless the consumer has applied for it in writing.

The first paragraph does not apply to the renewal or replacement, on the same conditions, of a credit card which the consumer has applied for or used; however, no person may renew or replace a credit card if the consumer has notified the issuer of the card in writing of his intention to cancel the credit card.

2870. No person may issue more than one credit card bearing the same number except at the written request of the consumer who is a party to the contract of variable credit.

2871. Where a credit card is lost or stolen, the consumer is not liable for any debt resulting from its use by a third person after the issuer has been notified of the loss or theft by telephone, telegraph, written notice or any other means.

Even in the absence of any notice, the consumer whose credit card is lost or stolen is not liable for any debt in excess of $ 50.

II — Statement of account

2872. At the end of each payment period of not more than thirty-five days, if a debt is still owing by the consumer, the professional shall mail to him a statement of account not less than twenty-one days before the date on which the professional may impose a credit charge on the consumer if he does not discharge his obligation in full; in the case of an advance of money, the credit charge may accrue from the date of the advance to the date of payment.

2873. The statement of account shall state

(1) the date of the end of the payment period;

(2) the balance of the account at the end of the previous payment period, specifying the part of the balance represented by advances of money;

(3) the date, description and value of each transaction debited to the account during the payment period, unless the professional appends copies of the vouchers to the statement of account;

(4) the date and amount of each sum credited to the account during the payment period;

(5) the credit charge imposed during the payment period;

(6) the balance of the account at the end of the payment period;

(7) the minimum payment required for the payment period;

(8) the time granted to the consumer to discharge his obligation without any credit charge except on advances of money.

2874. The consumer may require the professional to send to him free of charge copies of the vouchers for all transactions debited to his account during the payment period.

2875. Until the consumer receives a statement of account at his address, the professional cannot impose any credit charge on the unpaid balance except on advances of money.

III — Certain amendments to the contract

2876. Once the professional has specified to the consumer the amount up to which variable credit is extended to him, he shall not increase the amount except at the express request of the consumer.

2877. The professional may amend the contract to increase the subscription or renewal fees or the credit rate; in such a case, he shall send to the consumer, at the time prescribed by the regulations, a notice in the language of the contract containing only the amended clauses, as they read before and after amendment, and the date of coming into force of the increase.

Any unilateral amendment of a contract of variable credit which is inconsistent with this article is null.

IV — Prohibited clause

2878. No contract of variable credit may include a clause whereby the transfer of ownership of property sold to a consumer is deferred until he performs all or part of his obligation."

2. This Act will come into force when and as prescribed in the Act respecting the application of the Civil Code of Québec.

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