NATIONAL ASSEMBLY

FIFTH SESSION THIRTY-SECOND LEGISLATURE

Bill 20

An Act to add the reformed law of persons, successions and property to the Civil Code of Québec

Introduction

Introduced by
Mr Pierre Marc Johnson
Minister of Justice

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EXPLANATORY NOTES

The object of this bill is to reform the law of persons, the law of successions and the law of property, and to add to the Civil Code of Québec, which already comprises Book Two, on the family, three new Books on these subject matters, together with a preamble designed to situate the Code in the legislative structure.

BOOK ONE: PERSONS

Book One is added to the Civil Code of Québec for the object of reforming the law of persons. It comprises five Titles.

Title One deals with the enjoyment and exercise of civil rights and sets down the general principles in this regard.

Title Two is devoted to rights attached to the person. It has five chapters, under the headings of integrity of the person, which deals particularly with medical and other care, confinement in an establishment and psychiatric examination; respect of children's rights; respect of reputation and privacy, and respect for the body after death.

Title Three, which has four chapters, deals with particulars relating to the status of person. Chapter I sets forth the rules on assignment of name, use of name, change of name by administrative process or judicial process, and change of designation of sex on the act of civil status. Chapter II sets down the rules on domicile and residence, and Chapter III lays down those on absence, judicial declaration of death, return, and proof of death. Chapter IV is devoted to civil status and is divided into five sections dealing with the officer of civil status; the register of civil status; the acts of civil status, namely, acts of birth, acts of marriage and acts of death; alteration of the register of civil status, and custody of and access to the register.

Title Four sets forth the rules on the capacity of persons. The first of its three chapters deals with majority and minority, and with emancipation. Chapter II, on tutorship to minors, is divided into seven sections, on the subjects of tutorship, legal tutorship, dative tutorship, administration of tutors, tutorship councils, supervision of tutorships, and replacement of a tutor and the end of tutorship. Chapter III lays down the rules on protective supervision of persons of full age, setting forth, in order, the general provisions, the rules on the institution of protective

supervision, curatorship to persons of full age, tutorship to persons of full age, advisers to persons of full age, and the end of protective supervision.

The fifth and final Title of Book One deals with legal persons. It sets out the general rules on legal personality in Chapter I, where it treats with the kinds of legal persons, the juridical personality of legal persons, the registration of legal persons, the obligations and disqualification of directors, and judicial conferment of personality. Chapter II contains the provisions applicable to legal persons formed under the Civil Code, and deals with the functioning of legal persons and with their dissolution and liquidation.

BOOK THREE: SUCCESSIONS

The object of Book Three is to reform the law of successions. This Book has six Titles.

Title One determines the circumstances surrounding the opening of successions and establishes the qualifications required for succession.

Title Two, on rights of succession, has four chapters. Chapter I is on seizin; Chapter II, on petition of inheritance and the transmission of property; Chapter III, on the heir's right of option, sets forth the rules regarding deliberation and option, and acceptance and renunciation of a succession; Chapter IV, lastly, is on the survival of the obligation to provide support after the opening of the succession.

Title Three establishes the rules on legal devolution, and has five chapters. Chapter I determines heirship. Chapter II deals with relationship, defining degrees, generations and direct and collateral lines of ascent and descent. Chapter III defines representation, determines when it takes place and details its effects. Chapter IV establishes the order of devolution of successions, and Chapter V deals with devolution to the state.

Title Four, which has six chapters, deals, in order, with the nature of wills, the capacity required to make a will, the forms of wills, testamentary dispositions and legatees, the revocation of wills and legacies, and the proof and probate of wills.

Title Five, which has four chapters, sets forth the rules relating to the liquidation of successions. Chapter I deals with the object of liquidation and the separation of patrimoniums. Chapter II deals with the liquidator of the succession and lays down the rules on the designation and responsibilities of the liquidator, the inventory of the property and the functions of the liquidator. Chapter III deals with the payment of the debts and particular legacies, and Chapter IV governs the end of liquidation.

Title Six, with five chapters, contains the rules on partition. It deals with the right to partition and, as a corollary, the right to maintain undivided ownership. It also deals with the conditions of partition, lays down the rules to be followed when making up the shares, making preferential allotments

and making delivery of titles, and determines the obligation to return gifts, legacies and debts, the manner of making return and the effects of the return. The two final chapters deal with the effects of partition and the nullity of partition.

BOOK FOUR: PROPERTY

The object of Book Four is to reform the law of property. It has seven Titles.

Title One deals with the kinds of property and its appropriation. The four chapters of this Title deal, in order, with the kinds of property, that is, movable and immovable property; property in relation to its proceeds; property as related to persons having rights in it or possession of it, and certain de facto relationships concerning property. This last chapter sets out the rules on possession and those on the acquisition of vacant property, whether it be ownerless property or lost or forgotten movable property.

Title Two treats of ownership. Chapter I defines the nature and extent of the right of ownership, while Chapter II gives the rules on immovable and movable accession. The final chapter, Chapter III, sets forth special rules on the ownership of immovables, such as those respecting the limits and boundaries of land, waters, trees, access to and protection of another's land, view, right of way, and fences and common dividing fences.

Title III is devoted to the principal special modes of ownership. After defining the nature of undivided co-ownership and of so-called divided co-ownership, it devotes one chapter each to the rules on undivided co-ownership, divided co-ownership, and superficies ownership.

Title Four governs dismemberments of the right of ownership. It has four chapters, dealing, in order, with usufruct, use, servitudes and emphyteusis.

Title Five sets out rules regarding restrictions on the free disposition of certain property. Chapter I gives the rules on stipulations of inalienability, and Chapter II, those on substitution.

Title Six deals with certain patrimoniums by appropriation. Chapter I defines the foundation while Chapter II defines the trust, of which it specifies the various kinds and their duration, setting down the rules on their administration, and providing for changes to the trust and to the patrimonium, and for the termination of the trust.

The seventh and final Title lays down the rules on the administration of the property of others. The first chapter contains general provisions, while Chapter II determines the extent of the activities of the administrator of the property of others according as he has simple or full administration; Chapter III, on the rules of administration, sets out the obligations of the administrator towards the beneficiary and third persons and those of the

beneficiary towards third persons, as well as the rules on inventory, security and insurance, joint administration and delegation, presumed sound investments, apportionment of profit and expenditure, and the annual account. Chapter IV, on the termination of administration, sets forth the causes terminating administration and the rules on the rendering of account and delivery of the property.

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THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. A preamble and Book One are added to the Civil Code of Québec, established by chapter 39 of the statutes of 1980, before Book Two, "The Family", and read as follows:

PREAMBLE

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

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

BOOK ONE

PERSONS

TITLE ONE

THE ENJOYMENT AND EXERCISE OF CIVIL RIGHTS

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

Every human being also enjoys the rights and freedoms recognized by the Charter of human rights and freedoms.

2. Every person has a patrimonium.

The patrimonium may be divided or charged, but only to the extent provided by law.

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

These rights are inalienable.

4. Every person has the full exercise of his civil rights.

In the cases provided by law, a person exercises his civil rights through a representative or with the assistance of an adviser.

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

6. Every person shall exercise his civil rights in good faith. Good faith is always presumed.

7. No right may be exercised with the intent of injuring another or, without a serious and legitimate interest, in a way that is to his prejudice.

8. No one may renounce the enjoyment of his civil rights, but one may renounce the exercise of one's civil rights to the extent consistent with public policy.

9. In the exercise of civil rights, exceptions may be made to those rules of the Code which supplement intention, but no exception may

be made to rules concerning public policy, particularly where they contemplate the status, capacity or protection of persons, or where they are imperative or prohibitory.

TITLE TWO

CERTAIN RIGHTS ATTACHED TO THE PERSON

CHAPTER I

INTEGRITY OF THE PERSON

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

No interference may be done to his person without his free and enlightened consent or unless it is permitted by law.

SECTION I

CARE

11. No one may cause a person to undergo medical or other care except with his consent, whether for examination, specimen taking, treatment or other intervention.

12. Consent to medical care is not required in case of emergency if the life of the person is in danger, unless the care contemplated is unusual or useless and its consequences may be intolerable for the person.

Similarly, consent is not required in case of emergency if the integrity of the person is in danger and the person's consent is not obtainable in due time.

13. A minor fourteen years of age may consent alone to the medical care required by his state of health.

Notwithstanding the foregoing, if the minor's state requires that he be confined in a health or social services establishment for over twelve hours, the person having parental authority or his tutor shall be advised.

14. Consent for a minor under fourteen years of age or incapable of discernment, for care required by his state of health, is given by the person having parental authority or by his tutor.

15. Consent for a person of full age and incapable of discernment, for care required by his state of health, is given by his tutor or curator; if he is unable to be so represented in due time, or if the absence of discernment is temporary, consent is given by his spouse or, if he has no spouse or his spouse is prevented from giving it, by a close relative or by a person who shows a special interest in the person of full age.

16. The permission of the court is required if the person who may give consent for the person of full age and incapable of discernment or for the minor is unable or refuses to do so and if the refusal is not justified in the interest of the person concerned.

17. A person of full age may alienate part of his body *inter vivos* or undergo medical care not required by his state of health, or an experiment, provided the risk assumed is not disproportionate to the anticipated benefit.

A minor capable of discernment may act as in the first paragraph with the permission of the person having parental authority or the tutor if the care or experiment is minor and entails no serious risk to his health nor any major and permanent effects. In other cases, the permission of the court is required.

18. No person incapable of discernment may, without the permission of the court, alienate *inter vivos* part of his body, undergo any medical care not required by his state of health or undergo an experiment.

Notwithstanding the first paragraph, the tutor or curator may give his consent to medical care, if it is minor or if it entails no serious risk to the health nor any major and permanent effects.

19. When the court is called upon to rule on an application for permission in respect of the alienation of a part of the body, medical care or an experiment, it shall obtain the opinions of experts, of the person having parental authority, of the tutor or of the curator and of the tutorship council; it may also obtain the advice of any person who shows a special interest in the person concerned by the application.

The court shall also obtain the opinion of the person concerned unless that is impossible, and shall respect his refusal except for serious reasons.

20. Before ruling on an application for permission, the court shall satisfy itself that the alienation of part of the body, medical care or experiment is in the interest of the person concerned and is advisable in the circumstances; it shall also satisfy itself that the risk involved

in these acts is not disproportionate to the anticipated benefit or that they are beneficial to the person despite their major and permanent effects.

21. Consent to the alienation *inter vivos* of a part of a person's body, to medical care not required by a person's state of health or to an experiment shall be given in writing.

The consent may be withdrawn at any time, even verbally.

22. The alienation of a part of the human body not capable of regeneration shall be gratuitous.

The alienation of a part of one's body shall not be repeated if it involves a risk to the health.

SECTION II

CONFINEMENT IN AN ESTABLISHMENT AND PSYCHIATRIC EXAMINATION

23. No one may confine a person in a health or social services establishment without his consent or without an order of the court.

The consent of a person incapable of discernment is given by the person's tutor or curator.

24. The decision ordering that a person be confined shall also fix the duration of the confinement. In all cases, the person shall be discharged as soon as the confinement is no longer justified, even if the fixed period has not expired.

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

If the confined person is incapable of discernment, the information shall be given to the person having parental authority, and, where that is the case, to the tutor or curator, if any, or, failing them, to the close relatives or friends.

26. On proof that a person is a serious danger to himself or to others owing to his mental state, the court, on the application of a physician or an interested person, may order, notwithstanding the person's objection or absence of consent, that he be confined in a health or social services establishment to undergo a psychiatric examination.

27. Where the danger is imminent, any physician practising in a health or social services establishment may, without the permission of the court but at the request of an interested person, admit for confinement, for a period of not over forty-eight hours, a person who is a serious danger to himself or to others owing to his mental state.

At the end of the prescribed period, the person shall be discharged unless a decision of the court orders that he be kept under confinement or that he undergo a psychiatric examination. However, if the prescribed period ends on a Saturday or on a non-juridical day, if no judge having jurisdiction is able to act and interrupting the care would involve serious risk, his confinement may be extended until the end of the next juridical day.

28. A decision ordering a person's confinement in view of his undergoing a psychiatric examination shall also order that a report be made to the court within seven days. It may, as the case may be, authorize any other medical examination made necessary by the circumstances.

In no case may the report be disclosed to anyone but the parties without the permission of the court.

29. The report of the physician shall deal in particular with the necessity of confining the person in an establishment if he is a serious danger to himself or to others, with the capacity of the person who has undergone the examination to care for himself or to administer his property and, as the case may be, with the advisability of instituting protective supervision of the person of full age.

30. Where the report finds that it is necessary to confine the person in an establishment, there shall be no confinement without consent, except by authorization of the court.

31. The other rules respecting psychiatric examinations and the confinement of persons who are a serious danger to themselves or to others are provided in the acts respecting the protection or confinement of mentally ill persons.

CHAPTER II

RESPECT OF CHILDREN'S RIGHTS

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

33. In every decision concerning a child, the determining factors shall be the child's interests and the respect of his rights.

Consideration shall be given, in addition to the moral, intellectual, emotional and material needs of the child, to the child's age, health, personality and family environment, and the other circumstances in which he lives.

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

CHAPTER III

RESPECT OF REPUTATION AND PRIVACY

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

No one may invade the privacy of another person except with the consent of the person or his heirs or unless it is permitted by law.

36. Invasion of the privacy of a person includes, in particular, the following acts, if done without the person's consent:

(1) Entering a person's dwelling and taking any thing therein;

(2) Intentionally intercepting or using private communications;

(3) Appropriating or using a person's voice or image while the person is in private premises;

(4) Observing a person in his private life by any means;

(5) Using a person's name, image, likeness or voice for a purpose other than the legitimate information of the public;

(6) Using a person's correspondence, manuscripts or other personal documents.

37. Every person who establishes a file on another person shall have a serious and lawful interest for doing so and shall, in establishing and using the file, act in good faith and with prudence, so as not to damage the reputation nor invade the privacy of others.

38. Every person may examine and cause a copy to be made at his own expense of any file concerning him that a person has established or keeps on him for the information of a third person, subject to the Acts respecting access to documents held by public bodies and the protection of personal information.

He may cause inaccurate, incomplete or equivocal information to be rectified and cause irrelevant information, if it is prejudicial to him, to be deleted.

39. Where the law does not provide the conditions or modalities of exercise of the right of access to or rectification of a file, the court shall determine them on the application of the interested person.

CHAPTER IV

RESPECT FOR THE BODY AFTER DEATH

40. A person of full age may determine the nature of his funeral and the disposal of his remains; a minor capable of discernment may also do so with the written consent of the person having parental authority or his tutor.

Failing the expressed wishes of the deceased, the wishes of the heirs or successors prevail; the expenses are then charged to the succession, which shall reimburse them to the person who paid them.

41. Every person, even a minor, may, for medical or scientific purposes, give his remains or authorize the removal of organs or tissues therefrom.

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

42. A physician may remove a part of the body of a deceased person if, in the absence of knowledge of the wishes of the deceased, he obtains the consent of the spouse or, failing a spouse or if the spouse is prevented from giving consent, a close relative or, in the case of a minor, the consent of the person having parental authority.

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

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

44. An autopsy may be performed in the cases provided by law or with the written consent of the deceased; an autopsy may also be performed at the request of the spouse or a close relative of the deceased.

45. The court may, at the request of a physician or any interested person, order the performance of an autopsy on the deceased if the circumstances surrounding his death justify it; the coroner may do likewise in the cases provided for by law.

46. No person may embalm, bury or cremate a human body before the expiry of twelve hours after death.

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

Disinterment is also permissible on the lawful order of a coroner.

TITLE THREE

PARTICULARS RELATING TO THE STATUS OF PERSON

CHAPTER I

NAME

SECTION I

ASSIGNMENT OF NAME

48. Every person has a name, consisting of a surname and at least one given name, which is assigned to him at birth and is attested in his act of birth.

49. A child shall be given, at the choice of his father and mother, one or more given names and the surname of one of them or a surname consisting of not more than two parts taken from the surnames of his father and mother.

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

51. If the disagreement is over the choice of a given name, the registrar of civil status shall assign to the child two given names chosen by his father and his mother, respectively.

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

53. A child whose filiation is not established bears the surname and given names assigned to him by the registrar of civil status.

SECTION II

USE OF NAME

54. Every person has a right to respect for his name.

55. Every person who uses a name other than his own is responsible for any resulting confusion or harm.

56. The holder of a name, his spouse or his close relatives may object to the use of that name by a third person, if that person has no right to do so, and may demand redress for the harm caused.

SECTION III

CHANGE OF NAME

§ 1.—*General provision*

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

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

58. The registrar of civil status has competence to authorize a change of name in the following cases:

(1) The name generally used does not correspond to that appearing in the act of birth;

(2) The name is of foreign origin or too difficult to be pronounced or written in its original form;

(3) The name invites ridicule or has become infamous;

(4) The addition to the surname of a part taken from the surname of the father or the mother.

The competence of the registrar includes all other cases which do not come under the exclusive jurisdiction of the court where the reasons for authorizing a change of name are sufficient.

59. A person of full age who is a Canadian citizen and who has been domiciled in Québec for at least one year may apply for the change of his name as well as that of his minor children who bear the same name or part of that name.

A person may also apply for the change of name of his child in view of changing the child's given names or adding a part of his own surname to the child's surname.

60. A person applying for a change of name shall state his reasons and give the name of his father and mother, the name of his spouse and of his children and where that is the case, the name of the other parent.

The person shall attest under oath that the reasons stated and the information given are true, and shall append all the necessary documents to his application.

61. Except for compelling reason, no change of name of a minor child may be granted if the tutor or the minor, if fourteen years of age, has not been notified of the application or objects to it.

62. Before authorizing a change of name, the registrar of civil status shall satisfy himself that the notices of the application have been published, unless a special exemption from publication has been granted by the Minister of Justice for reasons of public interest; he shall give to third persons who so request the opportunity to state their views.

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

63. Every other rule respecting the administrative procedure for a change of name, the publication of the application and decision and the duties payable shall be determined by the Minister of Justice and published in the *Gazette officielle du Québec.*

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

64. The court has exclusive jurisdiction to authorize the change of name of a child:

(1) In the case of a change of filiation;

(2) In the case of the withdrawal of parental authority;

(3) In the case of the condemnation of one parent to an infamous punishment;

(4) Where the name does not correspond to the choice of the father and mother or where either parent was not given the opportunity to express his choice when the name was assigned.

65. A minor fourteen years of age acting alone may present an application for a change of name. Notice of the application shall be given to the person having parental authority and to the tutor.

66. The court may, on a motion by an interested person, review the decision of the registrar of civil status in respect of a change of name.

§ 4.—*Effects of a change of name*

67. A change of name becomes effective upon the final decision authorizing it.

Notice of the change shall be published in the *Gazette officielle du Québec*, except with special exemption granted by the Minister of Justice for reasons of public interest.

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

69. All documents made by a person who has changed his name, or that were made under his former name, are deemed made under his new name.

The person or an interested third person may demand that the documents be rectified, at his expense, by indicating the new name.

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

SECTION IV

CHANGE OF DESIGNATION OF SEX

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

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

72. The application shall be accompanied with, in addition to the other relevant documents, a certificate of the physician who took part in the treatment or in the operations and an attestation by a physician practising in Québec who had no part therein to the effect that the applicant has undergone them successfully.

73. An application for a change of designation of sex is subject to the same procedure as an application for a change of name, and to the same publication requirements and the same duties.

The decision of the registrar of civil status not to authorize the change may be reviewed by the court, on the application of the person concerned.

74. A change of designation of sex produces the same effects as a change of name, and in the same manner.

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

CHAPTER II

DOMICILE AND RESIDENCE

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

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

77. The residence of a person is the place where he ordinarily resides in fact; if a person has more than one residence, the main residence is deemed his residence.

78. A person's establishing a residence in a place creates a presumption of his intention to make it his principal establishment, unless he has manifested his intention of retaining his former domicile and of returning to it, if his return is foreseeable in the normal course of events and within a reasonable time.

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

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

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

The same rule applies to a person who, for the purposes of his functions, establishes a temporary residence at a place other than the place of his domicile.

81. An unemancipated minor is domiciled with his tutor.

82. Where tutorship is exercised by the father and mother but they have no common domicile, the minor is presumed to be domiciled with the parent with whom he resides unless the court has fixed the domicile of the child elsewhere or has assigned the custody of the child to the other parent.

If a minor ordinarily resides alternately with his father and with his mother, he is domiciled, failing a decision fixing his domicile, with the parent at whose domicile he has his principal establishment.

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

84. Spouses may have separate domiciles without prejudice to the rules respecting their living together.

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

Election of domicile is not presumed.

CHAPTER III

ABSENCE AND DEATH

SECTION I

ABSENCE

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

87. An absentee is presumed to be alive for seven years following his disappearance, unless he is proved to have died before then.

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

89. Any interested person, including the public curator or a creditor of the absentee, may apply for the institution of tutorship to the absentee.

Tutorship is awarded by the court on the advice of the tutorship council.

90. The court, at the request of the tutor or of an interested person and according to the importance of the property involved, fixes the amounts that it is expedient to allocate to the expenses of the marriage, to the maintenance of the family or to the payment of the obligation of support of the absentee.

91. The rules respecting tutorship to minors apply to tutorship to absentees, adapted as required.

92. The spouse of or the tutor to the absentee may, after one year of absence, apply to the court for the dissolution of the matrimonial regime.

Whether or not matrimonial regime is dissolved, the tutor shall obtain leave of the court to accept or renounce the partition of the acquests of the spouse of the absentee or otherwise decide on the rights arising from the regime.

93. Tutorship to an absentee is terminated by his return, by the appointment by him of a mandatary, by declaratory judgment of death or by proof of his death.

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

SECTION II

JUDICIAL DECLARATION OF DEATH

§ 1.—*Declaratory judgment of death*

95. When a person has been absent for seven years, any interested person, including the public curator, may apply to the court to attest to the duration of the absence and obtain a declaratory judgment of death.

96. A declaratory judgment of death may be pronounced even before the lapse of seven years when the death of a person domiciled in Québec or presumed to have died there may be held to be certain although it is impossible to draw up an attestation of death.

97. A declaratory judgment of death gives the name and sex of the person presumed dead, and, if known, the place and date of his birth and marriage, the place of his last domicile, the names of his father, mother and spouse, and the date, time and place of his death.

Copy of the judgment shall be transmitted without delay to the chief coroner by the clerk of the court that rendered it.

98. The date at the end of seven years from the disappearance or the last news of the absentee is fixed as the date of death; however, death may be fixed at an earlier date if the presumptions drawn from the circumstances allow the death to be held for certain.

99. In the absence of other proof, the place of death is fixed at the place where the person was seen for the last time.

§ 2.—*Effects of the judgment*

100. A declaratory judgment of death produces the same effects as death. Thus, it terminates the marriage of the absentee or of the person whose death is held to be certain, dissolves his matrimonial regime and opens his succession.

101. If the date of death is proved to precede that fixed by the judicial declaration of death, the dissolution of the matrimonial regime is retroactive to the true date of death and the succession is open from that date.

Relations between the heirs apparent and the true heirs are governed by book on successions.

SECTION III

RETURN

102. Where a person declared dead by judgment returns, the effects of the judgment cease, except in respect of his marriage and matrimonial regime.

Notwithstanding the foregoing, the former spouse retains the property he received at the dissolution of the regime as well as the matrimonial benefits deriving from the dissolution of the marriage and the share he has taken from the succession, if they are not of the nature of testamentary dispositions. Moreover, if difficulties arise between the former spouses over custody of the children or support, they shall be settled as in the case of separation from bed and board.

103. A person who has returned shall apply to the court to have the register of civil status rectified. He may also, subject to the rights of third persons, apply to the court for the cancellation or rectification of the entries or registration made following the declaratory judgment of death and nullified by his return, as if they had been made without right.

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

104. A person who has returned recovers his property in the condition in which it is and the balance of the price of any property which has been alienated and any property acquired with the price. He shall reimburse those who, in good faith, were in possession of his property and who discharged his obligations otherwise than with his property.

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

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

SECTION IV

PROOF OF DEATH

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

CHAPTER IV

THE REGISTER AND ACTS OF CIVIL STATUS

SECTION I

THE OFFICER OF CIVIL STATUS

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

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

SECTION II

THE REGISTER OF CIVIL STATUS

109. The register of civil status consists of all the acts of civil status.

110. The register of civil status shall be kept in duplicate; one duplicate shall be in writing and the other shall be a microfilmed reproduction of the duplicate in writing.

If there is any variance between the duplicates of the register, that in writing prevails.

111. The duplicates of the register of civil status shall be kept in different places. In all cases, one duplicate may be used to reconstitute the other.

112. A computerized version of the register of civil status may be kept.

SECTION III

ACTS OF CIVIL STATUS

§ 1.—*General provisions*

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

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

114. The registrar of civil status shall without delay draw up the acts of civil status from the attestations, declarations, judgments or other acts he receives regarding births, marriages and deaths occurring in Québec or concerning persons domiciled in Québec.

115. The registrar of civil status shall prepare the act of civil status by signing the declaration he receives or by drawing it up himself in accordance with the judgment or other act he receives.

The registrar of civil status shall date the declaration, affix a file number to it and place it in the register of civil status. The declaration thereupon constitutes an act of civil status.

116. Every attestation and declaration shall indicate the date on which it was made and the name, capacity and domicile of the maker, and bear his signature.

§ 2.—*Acts of birth*

117. The accoucheur shall draw up an attestation of birth in duplicate.

The attestation shall state the place, date and time of the birth, the sex of the child, and the name and domicile of the mother.

118. The accoucheur shall transmit one duplicate of the attestation to those who are required to declare the birth; he shall without delay transmit the other duplicate of the attestation to the registrar of civil status, together with the declaration of birth of the child if it can be transmitted immediately.

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

120. Only the father or the mother may declare the filiation of a child with regard to himself or herself. One of the parents may, however, declare the filiation of a child with regard to the other parent if he is deceased or if he is unable to express his will or to do so in due time.

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

121. The declaration of birth shall state the surname, given names and sex of the child, the place, date and time of his birth, the name and domicile of the father, of the mother, and of the witness, and the degree of consanguinity between the declarant and the child.

The declarant shall attach one duplicate of the attestation of birth to his declaration.

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

The declaration shall state the sex of the child, and, if known, his name and the place, date and time of his birth.

123. In cases where he gives shelter to or takes custody of the child, the declarant shall attach to his declaration a note relating the facts and circumstances and indicating, if known, the names of the father and mother.

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

§ 3.—*Acts of marriage*

125. The person who solemnizes a marriage shall declare it to the registrar of civil status within thirty days of the solemnization.

126. The declaration of marriage shall state the name and domicile of each spouse, their places and dates of birth, the date of their marriage, and the name of the father and mother of each of them and of the witnesses.

The declaration shall also state the name, domicile and capacity of the officiant and indicate, where such is the case, his religious affiliation.

127. The declaration of marriage shall indicate, where such is the case, the fact of a dispensation from publication and, if one of the spouses is a minor, the authorizations or consent obtained.

128. The declaration shall be signed by the officiant, the spouses and the witnesses.

§ 4.—*Acts of death*

129. A physician who establishes that a death has occurred shall draw up an attestation of death in duplicate.

He shall remit one duplicate of the attestation to the person who is required to declare the death; he shall without delay transmit the other duplicate to the registrar of civil status, together with the declaration of death if it can be transmitted immediately.

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

131. The attestation shall state the name and sex of the deceased and the place, date and time of death.

132. The declaration of death shall be made without delay to the registrar of civil status by the spouse of the deceased, a close relative or a person related by marriage or, failing them, any other person able to identify the deceased. The declaration shall be made before a witness, who shall sign it.

133. The declaration of death shall state the name and sex of the deceased, the place and date of his birth and of his marriage, the place of his last domicile, the place, date and time of death, the place, date and mode of disposal of the remains, and the names of his father and mother and, as the case may be, of his spouse.

The declarant shall attach a duplicate of the attestation of death to his declaration.

134. If the date and time of death are unknown, the registrar of civil status shall fix them on the basis of the report of a coroner and the presumptions drawn from the circumstances.

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

135. If the deceased cannot be identified, the attestation shall include a description and an account of the circumstances surrounding the discovery of the body.

SECTION IV

ALTERATION OF THE REGISTER OF CIVIL STATUS

§ 1.—*General provisions*

136. The clerk of the court that has rendered a judgment changing the name or filiation of a person, declaring an adoption, recognizing an adoption effected outside Québec or changing any particular in an act of civil status shall give notice of the judgment to the registrar of civil status as soon as it acquires status as a *res judicata*.

He shall give similar notice of declaratory judgments of death, judgments to reconstitute or replace an act of civil status and judgments of divorce and nullity of marriage.

137. If any judgment contemplated in article 136 relates to an act of civil status entered in a register kept by other depositaries, the registrar of civil status shall require them to alter the act accordingly.

§ 2.—*Preparation of acts and marginal notation*

138. Where a birth, a marriage or a death which occurred in Québec is not attested or declared or is inaccurately attested or declared, the registrar of civil status shall make a summary investigation and, except in matters concerning filiation, draw up the act of civil status on the basis of the information he obtains.

If the event occurred more than one year previously, the registrar shall not draw up the act except with the permission of the court granted upon his application or that of an interested person.

139. Where the declaration and the attestation contain contradictory particular, no act of civil status may be drawn up except with the permission of the court, on the application of the registrar or of an interested person.

140. The registrar of civil status shall draw up a new act of civil status immediately upon receiving notification of a judgment changing the civil status of a person or an essential particular in any act of civil status.

The registrar shall act as in the first paragraph where his decision to authorize a change of name or of designation of sex is final, or on his receiving a judgment confirming that decision.

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

141. The new act is substituted for the original act; it shall repeat all the statements and marginal notations that are not affected by the alterations.

The substitution must also be noted in the original act replaced by the new act.

142. On receiving notification of a declaratory judgment of death, the registrar of civil status shall draw up an act of death, indicating the particulars in accordance with the judicial declaration.

He shall make a notation in the margin of the act of the date of the judgment, the court that rendered it and the number of the court record.

143. The registrar of civil status, upon notification of a judgment declaring the nullity of a marriage or granting a divorce, shall make a notation in the margin of the acts of birth and marriage of each of the persons concerned.

144. The registrar of civil status shall make a notation of the act of marriage in the margin of the act of birth; he shall also make a notation of the act of death in the margin of the act of birth and the act of marriage.

145. Where the registrar of civil status makes a notation on an act as the result of a judgment, he shall enter, in the margin of the act, the date of the judgment, the court that rendered it and the number of the court record.

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

146. The registrar of civil status, upon receiving an act of civil status made outside Québec but relating to a person domiciled in Québec, shall place the act in the register or, as the case may be, draw up an act of civil status and enter it in the register.

147. The registrar of civil status, upon receiving any act, including a judgment, made outside Québec which alters or replaces an act of civil status, shall enter it in the register, draw up a new act of civil status or make a notation in the margin of the act in his possession.

148. If an act drawn up outside Québec has been lost or destroyed or if a copy of it cannot be obtained, the registrar of civil status may, with the permission of the court, draw up an act of civil status or make a notation in the margin.

149. Where there is doubt as to the validity of an act made outside Québec, the registrar of civil status shall refuse to draw up an act of civil status or to make a notation in the margin of an act until the validity of the document is recognized by a court of Québec.

150. Every act made outside Québec and drawn up in a language other than French or English shall be accompanied with a translation authenticated in Québec.

151. The cost of preparing an act of civil status is charged to the person who has failed to report the event; it is charged to the applicant where an act is made on the basis of an act made outside Québec.

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

152. The registrar of civil status shall rectify clerical errors in any act.

The registrar may in particular, in the case of any inconsistency between the act reproduced on microfilm and the written act of civil status, make the former consistent with the latter.

153. Except in the cases provided for in this chapter, the court has exclusive jurisdiction to order the rectification of an act of civil status or its insertion in the register.

The court, at the request of an interested person, may also review any decision of the registrar of civil status relating to the insertion or rectification of an act.

§ 4.—*Reconstitution of an act or the register*

154. The registrar of civil status shall reconstitute, on the basis of the information he obtains, any act which has been lost or destroyed, or of which a copy cannot be obtained.

155. Where the whole or part of one of the duplicates of the register is lost, the registrar of civil status shall reconstitute it on the basis of the other duplicate, the computerized version or any other information.

156. The acts so reconstituted are valid only if the court has ascertained that the proofs are genuine and that the procedure followed was in order. They are authentic.

SECTION V

CUSTODY OF AND ACCESS TO THE REGISTER OF CIVIL STATUS

157. The register of civil status is accessible to the public through the issue of copies of acts, certificates or attestations bearing the vidimus of the registrar of civil status and the date of issue.

Copies of acts of civil status and certificates issued under this section are authentic.

158. The copy of any act of civil status shall be a full reproduction of the act including the marginal notations.

159. A certificate of civil status shall set forth the name of the person concerned, his sex, the place, date and time of his birth, and, where such is the case, the place and date of an undissolved marriage or of his death.

160. An attestation shall deal with a particular or a fact recorded in the act of civil status or in the register.

161. The registrar of civil status shall issue copies of an act to the persons mentioned in the act or any person who establishes his interest and issue a certificate to any person applying for it.

The registrar shall issue attestations to any one or only to persons who establish their interest, according as the nature of the particular or event they attest to appears on a certificate or a copy.

162. When an act has been replaced, only the persons mentioned in the new act may obtain a copy of the original act. However, in cases of adoption, no copy of the original act is ever issued unless, the other lawful conditions having been fulfilled, it is authorized by the court.

163. The register of civil status and the computerized version may be consulted only with the authorization of the registrar of civil status.

If the registrar allows the register to be consulted, he shall determine the conditions required in that case for the safeguard of the information it contains.

164. The Minister of Justice shall determine, by order, the persons to whom the registrar of civil status may delegate his power to sign documents or to ensure access to the register, and the manner in which it is to be done.

165. The Government, by order, shall fix the additional particulars that may appear on attestations, the duties payable for the issue of copies of acts, certificates or attestations and the charge for preparing an act or consulting the register.

166. The orders shall be published in the *Gazette officielle du Québec*.

TITLE FOUR

CAPACITY OF PERSONS

CHAPTER I

MAJORITY AND MINORITY

SECTION I

MAJORITY

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

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

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

SECTION II

MINORITY

169. A minor has the enjoyment of his civil rights to the extent provided by law.

170. A minor fourteen years of age is deemed to be of full age for the purposes of all acts pertaining to his employment or to the exercise of his craft or profession.

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

No minor may by contract prejudice his own rights.

172. Except where he may act alone, a minor is represented by his tutor for the exercise of his civil rights; in the cases provided for by law a minor may be represented by the person having parental authority.

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

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

Notwithstanding the foregoing, a minor may, with leave of the court, institute alone an action relating to his status, to the exercise of parental authority or to an act that he may perform alone; he may in such a case act alone as defendant.

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

175. Every act performed alone by a minor where the law does not allow him to act alone or through a representative, is null.

176. Acts performed without the formalities prescribed to the tutor may be annulled at the request of the minor, without his having to prove damage.

177. A minor who suffers damage from an act he performed alone or performed by his tutor in excess of his powers may apply for the annulment of the act or the reproduction of the obligations arising from it.

178. A minor is barred from recourse in nullity or reduction of his obligations if the damage he suffers is caused by a fortuitous and unforeseen event.

A minor is also barred from recourse in nullity or reduction of obligations arising from offences or quasi-offences committed by him.

179. Where an act is annulled following an application by a minor, he is exempt from returning what he received during his minority, except to the extent of his permanent enrichment thereby.

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

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

SECTION III

EMANCIPATION

§ 1.—*Simple emancipation*

182. The tutor may, after obtaining the advice of the tutorship council, emancipate a minor if he is sixteen years of age and requests it, by filing a declaration to that effect in the court of his domicile. A copy shall be sent to the public curator.

Emancipation is effective from the filing of the declaration.

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

The minor may apply alone for his emancipation.

184. The tutor is accountable for his administration to the emancipated minor whom he shall, however, continue to assist gratuitously.

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

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

187. In addition to the acts that a minor may perform alone, an emancipated minor may perform all acts of simple administration; he may also sign leases for terms not exceeding three years and give property according to his means, provided he does not materially affect his capital.

The emancipated minor has no recourse by reason of his minority in nullity of, or reduction of obligations arising from, an act contemplated in this article, even if he suffers damage therefrom.

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

Any act performed without assistance or authorization may be annulled or the obligations arising therefrom reduced if the emancipated minor suffers damage therefrom.

189. Loans or borrowings of large amounts, considering the patrimonium of an emancipated minor, and deeds of alienation of an immovable or undertaking require the authorization of the court, on the advice of the tutor. If the minor suffers damage from an act performed without authorization, he may apply for the annulment of, or the reduction of obligations arising from, the act.

§ 2.—*Full emancipation*

190. Full emancipation enables a minor to perform all civil acts as if he were of full age.

Full emancipation may be declared only by the court for a serious and legitimate cause; only the minor may apply for it.

The tutor, the tutorship council, the person having parental authority and any person having custody of the minor shall be summoned to give their opinion. Furthermore, copy of the judgment shall be transmitted to the public curator.

CHAPTER II

TUTORSHIP TO MINORS

SECTION I

TUTORSHIP

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

192. Tutorship to minors is legal or dative.

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

193. Tutorship is a personal office accessible to every person of full age having the full enjoyment of his civil rights and who is suited for the office.

194. No person may be compelled to accept the office of dative tutorship except, failing any other person, the director of youth protection or, for tutorship to the property, the public curator.

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

196. Tutorship exercised by the director of youth protection or the public curator is attached to the office and passes to his successor.

197. Fathers and mothers, other persons having parental authority and the director of youth protection exercise tutorship gratuitously.

198. A dative tutor may receive such remuneration as may be fixed by the court or by the father or mother who appoints him or, if so authorized, by the liquidator of the succession of either of them. The expenses of the tutorship and the revenue from the property to be administered are taken into account.

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

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

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

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

202. A legal person may act as tutor to the property, if authorized to act as such by law.

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

204. In case of disagreement relating to the exercise of the tutorship between the father and mother or between the tutor to the person and the person having parental authority, any of them may refer the dispute to the court.

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

205. Tutorship is based at the domicile of the tutor.

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

SECTION II

LEGAL TUTORSHIP

206. The father and mother of a minor child, if of full age or emancipated and having parental authority, are, of right, tutors to their child.

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

207. The father and mother exercise tutorship together unless one parent be deceased or unable to express his will or to do so in due time.

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

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

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

210. Total deprivation of parental authority entails loss of tutorship; partial deprivation entails the loss of tutorship only if so decided by the court.

211. A father or mother deprived of tutorship as a result of having been totally or partially deprived of parental authority may, even after dative tutorship is established, be reinstated as tutor once his or her parental authority is restored.

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

213. The director of youth protection is also, until the adoption judgment, legal tutor to a child declared eligible for adoption or in whose respect he has received a general consent to adoption, unless another tutor is appointed by a court decision.

SECTION III

DATIVE TUTORSHIP

214. A father or mother may appoint a tutor to his or her minor child by will or by filing a declaration to that effect with the public curator.

215. The right to appoint a tutor belongs exclusively to the last surviving parent if he has retained legal tutorship to the days of his death.

216. Where both parents die simultaneously, each having designated a different person as tutor, and both persons accept, the court shall decide which person is to exercise tutorship.

217. Except where the designation is contested, the tutor appointed by the parents assumes office upon accepting it, after the death of the last surviving parent.

If the tutor appointed by the parents has not refused the tutorship within thirty days after being informed of his appointment, he is presumed to have accepted.

218. If the tutor appointed by the parents accepts the tutorship, he shall so notify the liquidator of the succession and the public curator.

219. Refusal to accept the tutorship is made in writing and notified to the liquidator of the succession and to the public curator.

220. Where the person appointed by either parent refuses the office of tutor, he shall immediately notify his refusal to the substitute, if any, designated by the parent.

Notwithstanding the foregoing, the person may retract his refusal before the substitute accepts the office or an application to institute tutorship is made to the court.

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

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

222. The minor, the person having parental authority and persons closely related to the minor by blood or marriage or any other interested person, including the public curator, may apply to the court and, if

necessary, propose a suitable person who agrees to exercise the tutorship.

223. The director of youth protection may also apply for the institution of tutorship to an orphan who is a minor and who has no tutor, or to a child whose father and mother or tutor fail to assume in fact the maintenance and education, or to a child who is in danger if he remains with his father and mother.

SECTION IV

ADMINISTRATION OF TUTORS

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

225. Fathers and mothers are not required in the administration of the property of their minor child to make an inventory of the property, to furnish a surety bond as a guarantee of their administration, to render an annual account of management or to obtain any advice or authorization from the tutorship council or the court unless the value of the property is greater than $7 000 or it is ordered by the court on the motion of an interested person.

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

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

227. For any act beyond simple administration, the tutor must be specially authorized by the tutorship council and in certain cases, by the court.

228. A tutor may accept alone any liberality in favour of his pupil. In no case, however, may he accept any gift or any legacy involving an obligation without obtaining the authorization of the tutorship council.

229. No tutor may transact or continue an appeal without leave from the court.

230. The tutor, before offering property as security, alienating an important piece of family property, an immovable or an undertaking or demanding the definitive partition of immovables held by the minor

in undivided ownership, shall obtain the authorization of the court, which shall seek the advice of the tutorship council.

The court may allow property to be alienated by onerous title or offered as security only where that is necessary to ensure the education and maintenance of the minor, to pay debts or to maintain the property in good working order or safeguard its value. The authorization shall then indicate the property that may be alienated or offered as security and set forth the conditions in which it may be done.

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

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

232. No tutor may, before obtaining an expert's appraisal, alienate property worth more than $7 000, except in the case of securities quoted and traded on a recognized stock exchange according to the provisions respecting presumed safe investments.

A copy of the appraisal shall be attached to the annual management account.

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

233. The clerk of the court shall immediately give notice to the tutorship council and to the public curator of any judgment relating to the interests of the patrimonium of a minor and of any transaction effected pursuant to an action to which the tutor is a party in that capacity.

234. The liquidator of a succession all or part of which devolves or is bequeathed to a minor, the donor of a property worth more than $7 000 if the donee is a minor and any person who pays an indemnity for the benefit of a minor shall declare that fact to the public curator and state the value of the property.

235. A tutor shall set aside from the property under his administration all sums necessary to discharge the obligations of the tutorship, in particular, to provide for the maintenance and education of the minor, the administration of his patrimonium and, generally the enjoyment of his civil rights.

236. The tutor to the person shall agree with the tutor to the property as to the amount he requires each year to discharge the obligations of the tutorship.

If the tutors do not agree on the amount or its payment, the tutorship council or failing that the court shall decide.

237. The minor retains the administration of the proceeds of his work; he also retains the administration of the allowance paid to him to meet his ordinary and usual needs.

238. Where the revenues of the minor are considerable or where justified by the circumstances, the court, after seeking the advice of the tutor or, as the case may be, the tutorship council, may fix the amount that may remain under the administration of the minor. It shall take into account the age and power of discernment of the minor, the general conditions of his maintenance and education and his obligations of support and those of his parents.

239. The director of youth protection exercising a tutorship or the person he recommends therefor shall, where the law requires the tutor, before acting, to obtain the advice or permission of the tutorship council, be authorized by the court.

Notwithstanding the foregoing, where the property is worth more than $7 000 or if so ordered by the court, tutorship to the property is conferred on the public curator, who has the rights and obligations of a dative tutor, subject to legislative provisions relating to public curatorship.

240. Where the director of youth protection exercises tutorship to a minor ordinarily confined in a health or social services establishment, the establishment shall, through its authorized representative, assume custody of the child.

The establishment is accountable for the custody to the director of youth protection who may, where he ascertains the existence of a conflict of interest between the guardian and the child, apply to the court for the withdrawal of the custody or the designation, as the case may be, of another guardian.

SECTION V

TUTORSHIP COUNCIL

§ 1.—*General provisions*

241. The role of the tutorship council is to supervise the tutorship to ensure the protection of the minor, the administration of his patrimonium and, generally, the enjoyment of his civil rights.

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

No council is established where the tutorship is exercised by the director of youth protection, a person he has recommended, or the public curator.

§ 2.—*Constitution of the council*

243. Depending on the personal situation of the minor or on that of his family and on the importance of his patrimonium, the tutorship council is composed of one or of several persons.

244. Any interested person may initiate the constitution of a tutorship council by convening a meeting of relatives by blood or by marriage and of friends before the prothonotary of the place where the minor has his domicile or residence, or before a notary.

The court having cognizance of an application for the appointment of a tutor or a tutorship council may do likewise, even of its own initiative.

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

The father and mother may, at their option, convene a meeting of relatives by marriage or by blood and of friends or make an application to the court to obtain that it establish a tutorship council composed of one person designated by it.

246. The court may rule that the tutorship council will consist of only one person designated by it where, owing to the dispersal, indifference or major impediment of the family members, the council cannot be constituted or where, owing to the personal situation of the minor or that of his family, it would be unadvisable to do so.

247. The court may designate a judge, an officer of justice or another person who shows special interest in the minor, to act as tutorship council. It may also designate, if he is not already the tutor, the director of youth protection or the public curator.

248. In no case may the tutor be a member of the tutorship council but he shall, as well as the minor capable of discernment, be invited to every meeting to give his opinion.

249. No person may be compelled to accept membership on the council; any one who has agreed to become a member may be released at anytime provided it is not done at an inopportune time.

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

250. The father and mother of the minor if they have parental authority, his brothers and sisters of full age and his other ascendants shall be called to the meeting of relatives by blood or marriage and friends called to constitute a tutorship council.

The other relatives by blood or by marriage and the friends of the minor may be called to the meeting provided they are of full age.

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

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

252. The meeting shall decide whether the council is to consist of three or of five persons; it shall appoint the members and two substitutes, giving consideration so far as possible to representation of the maternal and paternal lines.

The meeting shall also fix the seat of the council and appoint, from among the members of the council or not, a secretary responsible for taking and keeping the minutes of the deliberations of the council; it shall fix the secretary's remuneration if necessary.

253. Vacancies are filled by the council by selecting a designated substitute in the line where the vacancy occurred. If there is no substitute, it shall select a relative by blood or marriage in the same line or, if none, a relative by blood or marriage in the other line or a friend.

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

254. The tutorship council shall give the advice and, where such is the case, the authorizations required by law.

255. Whenever the rules of administration of the property of others provide that the beneficiary shall or may give his consent to an act, obtain advice or be consulted, the council shall act on his behalf.

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

257. The council shall cause a tutor *ad hoc* to be appointed whenever the minor has any interest to discuss judicially with his tutor.

258. The council shall satisfy itself that the tutor draws up an inventory of the property of the minor and that he furnishes and maintains a security.

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

259. Any interested person may, for a serious cause, apply to the court within ten days to have a decision of the council reviewed or for leave to initiate the constitution of a new council.

260. The council composed of several persons shall meet at least once a year; deliberations are not valid unless a majority of its members attend the meeting.

Meetings may be held by means of a telephone conference.

261. The tutor may convene the council or, if it cannot be convened, apply to the court for leave to act alone.

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

SECTION VI

SUPERVISION OF TUTORSHIPS

§ 1.—*Inventory*

263. Within sixty days of the institution of tutorship, the tutor shall make an inventory of the property to be administered. The tutor

must do the same in respect of property devolved on the minor after the tutorship is instituted.

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

265. Copy of the inventory shall be sent to the public curator and, to the tutorship council.

§ 2.—*Security*

266. The tutor shall, if the value of the property to be administered exceeds $ 7 000, take out liability insurance or furnish another security to guarantee his administration. The kind and object of the security and the time granted to furnish it are determined by the tutorship council.

267. The tutorship is responsible for the costs of the security.

268. The tutor shall, without delay, furnish proof of the security to the tutorship council and to the public curator.

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

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

270. Where it is advisable to withdraw the obligation to furnish security, the tutorship council, or the minor, once he attains full age, may do so and apply, where that is the case, for the cancellation of the registration. Notice thereof is given to the public curator.

§ 3.—*Reports and accounts*

271. The tutor shall send the annual account of his management to the minor if he has attained fourteen years of age, to the tutorship council and to the public curator.

272. The tutor to the property shall render an annual account of his management to the tutor to the person.

273. At the end of his administration the tutor shall give a final account to the minor become of full age; he shall also give it, as the case may be, to the liquidator of the succession of the minor, to the new tutor and to the minor if he has attained fourteen years of age. He must send a copy of his final account to the tutorship council and to the public curator.

274. Every agreement between the tutor and the minor become of full age relating to the administration or the account is null unless it is preceded by a detailed rendering of accounts and the delivery of the related vouchers.

275. The public curator shall examine the annual accounts of management and the final account of the tutor. He shall also satisfy himself that the security is maintained.

He may require any document and any explanation concerning the accounts.

SECTION VII

REPLACEMENT OF TUTOR AND END OF TUTORSHIP

276. A dative tutor may, for a valid cause, apply to the court to be relieved of his duties, provided his application is not made at an inopportune time and notice of it has been sent to the tutorship council.

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

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

278. Where tutorship is exercised by the director of youth protection, by a person he recommends or by the public curator, any interested person may apply for their replacement without having to justify it for any reason other than the interest of the minor.

279. During the proceedings, the tutor shall continue to exercise his duties unless the court decides otherwise and appoints a provisional administrator who is responsible for the simple administration of the property of the minor.

280. A judgment terminating the duties of a tutor must contain the grounds on which it is founded and designate the new tutor.

281. The duties of a tutor cease at the end of the tutorship, when he is replaced or on his death.

282. Tutorship ends when the minor attains the age of majority, obtains full emancipation or dies.

CHAPTER III

PROTECTIVE SUPERVISION OF PERSONS OF FULL AGE

SECTION I

GENERAL PROVISIONS

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

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

284. Every decision concerning a person of full age who is under protection must be in his interest, respect his rights and safeguard his autonomy.

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

285. A tutor or curator shall be appointed to represent, or an adviser to assist, a person of full age who is unable to care for himself or to administer his property by reason, in particular, of illness, disability or debility due to age which impairs his mental faculties or his physical ability to express his will.

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

286. The director general of a health or social services establishment shall, where a person of full age receiving treatment or resident in the establishment requires to be assisted or represented in the exercise of his civil rights report that fact to the court.

The report shall be drawn up on the written recommendation of the specialist who examined the person of full age; it shall deal with the nature and degree of the disability of the major person and on the advisability of instituting protective supervision for him.

287. Where the report contemplated in articles 29 and 287 is filed in court, the prothonotary shall so inform the person of full age, his spouse, his known close relatives by blood or marriage, the public curator, any other interested person and, where such is the case, the attorney of the person of full age.

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

As the case may be, a curator, a tutor to the person and to the property, a tutor to the person or to the property or an adviser to assist him is appointed to the person.

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

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

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

291. The public curator exercises *ex officio* curatorship or tutorship to a person of full age who is under protective supervision if he is not already provided with a curator or a tutor.

292. The public curator has the simple administration of the property of a protected person of full age even when acting as curator. He has custody of the person unless the court decides otherwise.

The person to whom the court entrusts custody shall exercise the power of a curator or tutor to give consent to health care.

293. Where the protected person of full age resides in a health or social services establishment, the public curator exercising tutorship or curatorship while having custody of the person of full age may, to the extent he indicates, delegate the exercise of the custody to a person designated in accordance with the Acts relating to public curatorship who is not employed by the establishment and has no duties therewith. He may, in particular, authorize that person to give consent to the ordinary care required by the state of health of the person of full age.

294. At least once a year, the person designated shall render account of the exercise of the custody to the public curator. The public curator may, if there is a conflict of interest between the person designated and the person of full age, revoke the delegation.

SECTION II

INSTITUTION OF PROTECTIVE SUPERVISION

295. The institution of protective supervision of a person of full age is awarded by the court of the domicile of that person.

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

296. The person of full age himself, his spouse, his close relatives by blood or by marriage, any person showing a special interest in the person or any other interested person, including the public curator may apply for the institution of protective supervision.

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

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

298. During proceedings and provisionally, the court may, even of its own initiative, decide on the custody of the person of full age or appoint an administrator responsible for the simple administration of his property.

A deed under which the person of full age has entrusted another person with the administration of his property continues to be executed unless it is revoked by the court for serious cause.

299. In the course of the proceedings and thereafter if the form of protective supervision is a tutorship, the dwelling of the protected person of full age and the furniture in it shall be kept at his disposal. The power to administer, in respect of that property, allows only for conventions of precarious enjoyment, which cease to have effect by operation of law upon the return of the protected person of full age.

Should it be necessary or in the best interest of the protected person of full age that his furniture or his rights in respect of a dwelling be disposed of, the deed shall be authorized by the court. Even in such a case, except for unavoidable cause, souvenirs and other personal effects shall not be disposed of and shall, if possible, be kept at the disposal of the person of full age by the health or social services establishment.

300. Where the court is called upon to establish protective supervision, it shall take into consideration, in addition to the advice of the persons who should ordinarily be called to form the tutorship council, the medical expertise and evidence, and the degree of autonomy of the person in whose respect the institution of protective supervision is applied for.

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

301. Where, in the eventuality of his becoming incapacitated, a person of full age has made provisions to entrust the administration of his property to a third person, the court, except for serious cause, shall, in establishing protective supervision, take into account the expression of that will.

302. Any judgment instituting protective supervision may be reviewed at any time if the cause has ceased or the condition of the person has changed.

The court shall fix a date for the review of the judgment not later than three years in the case of a tutorship or the appointment of an adviser or five years in the case of a curatorship.

303. The director general of the health or social services establishment where the protected person of full age resides or is receiving treatment shall, if the incapacity that justified protective supervision ceases, attest that fact in a report drawn up on the recommendation of a specialist, which he shall file in court.

The prothonotary shall notify the persons qualified to intervene in the application for the institution of protective supervision that the report has been filed. If no objection is presented within thirty days, protective supervision is terminated without any other formality. An attestation of the termination shall be drawn up by the prothonotary and transmitted without delay to the person of full age himself and to the public curator.

SECTION III

CURATORSHIP TO PERSONS OF FULL AGE

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

The court shall then appoint a curator.

305. The curator has the full administation of the property of the protected person of full age, except that he is bound, as the administrator entrusted with simple administration of the property of others, to make

only investments that are presumed to be sound. The only rules which apply to his administration are the rules of administration of the property of others.

306. Every act performed alone by a person of full age under curatorship may be declared null or the obligations resulting from it reduced without it being necessary to prove damage.

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

SECTION IV

TUTORSHIP TO PERSONS OF FULL AGE

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

The court shall then appoint a tutor.

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

310. A person of full age under tutorship has the same capacity to exercise his civil rights as a minor. However, the court may, on the institution of the tutorship or subsequently, increase or limit that capacity on the advice of specialists and, as the case may be, of the tutorship council or of persons ordinarily called upon to form the tutorship council. The court shall then indicate the acts which the person under tutorship may perform alone, or with the assistance of the tutor and those that he may not perform unless he is represented.

311. Unless his capacity in that respect is expressly restricted by the court, the person of full age under tutorship retains the administration of the proceeds of his work.

312. If the person of full age suffers damage from acts performed before the tutorship, they may be annulled or the obligations resulting from them reduced on the mere proof that the incapacity was notorious or known to the other party at the time the acts were performed.

SECTION V

ADVISER TO THE PERSON OF FULL AGE

313. The court shall appoint an adviser to a person of full age who, although generally and habitually capable of caring for himself and administering his property, requires, for certain acts or for a certain time, to be assisted or advised in the exercise of his civil rights.

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

315. The court, on the institution of the tutorship or subsequently, shall indicate the acts for which the adviser's assistance is required, and those for which it is not required.

If the court gives no indication, the protected person of full age shall be assisted by his adviser for every act beyond the capacity of an emancipated minor.

316. Acts performed alone by a person of full age whereas the intervention of his adviser was required may be cancelled or the obligations resulting from them reduced if the acts cause him damage.

SECTION VI

END OF PROTECTIVE SUPERVISION

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

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

318. A protected person of full age may at any time after the removal of protective supervision and, where such is the case, after the rendering of accounts by the tutor or curator, confirm any act that may otherwise be annulled.

319. Where an act is annulled following an application by the protected person of full age, his curator, tutor or adviser, the person of full age is exempt from returning what he received under that act while he was under protective supervision, except to the extent of his permanent enrichment thereby.

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

The tutorship council shall, on the occurence of the vacancy, demand the appointment of a new curator, tutor or adviser; any interested person may also demand such an appointment.

TITLE FIVE

LEGAL PERSONS

CHAPTER I

LEGAL PERSONALITY

SECTION I

KINDS OF LEGAL PERSONS

321. Except with regard to the rules on registration, legal persons are constituted in accordance with the juridical forms provided by law, and sometimes directly by law.

Legal persons are of public interest or of private interest.

322. Legal persons of public interest are primarily governed by the Acts by which they are constituted and the Acts which are applicable to them; they are also governed by this Code where the provisions of such Acts require to be complemented, particularly with regard to their property or their relations with other persons.

323. Legal persons of private interest shall assume the juridical forms recognized by law as conferring legal personality; they are mainly of two kinds, associations and companies, and generally comprise several members.

Legal persons of private interest are primarily governed by the Acts that are applicable to their particular type; they are also governed by this Code where such Acts require to be complemented, particularly with regard to their property or their relations with other persons.

324. The object of an association is to meet the needs of its members or of third persons through the combination of property, knowledge and activities. Its essential object is neither profit-making nor the carrying on of an enterprise. It does not share profits among its members.

325. The object of a company is to make and share a profit; its object may also be to benefit from the savings that may result from the combination of property, knowledge and activities or to meet common economic and social needs by carrying on an enterprise.

SECTION II

JURIDICAL PERSONALITY

326. Companies, associations and other private groups are endowed with juridical personality from the time of their registration in the registry of associations and enterprises. Public corporations, and companies, associations and other groups that are created directly by statute are endowed with juridical personality upon the coming into force of the Act or from the time prescribed therein.

327. No company, association or other group that is not otherwise endowed with juridical personality may set up juridical personality against third persons, invoke status as a legal person or take legal action unless it is registered.

Notwithstanding the foregoing, the court, in deciding an action by a third person in good faith, may rule that a person or group has the same obligations as a legal person if the person or group acted as a legal person in respect of the third person.

328. Legal persons constituted under the Acts of Québec have full enjoyment of civil rights in Québec and outside Québec.

329. Every legal person has a patrimonium which may, to the extent provided by law, be divided or assigned to a purpose. It also has extra-patrimonium rights and obligations attached to its legal personality.

330. Legal persons have full capacity to exercise their rights and the provisions of this Code respecting the exercise of civil rights by natural persons are applicable to them, adapted as required.

A legal person has no limitation other than that which may result from its nature or by operation of law.

331. No legal person may exercise tutorship or curatorship to the person nor be a juror; a legal person shall appear before the court through an attorney and be represented by a natural person where it is summoned as a witness.

Notwithstanding the foregoing, a legal person may, to the extent provided by law, exercise the duties of tutor or curator to property, liquidator of a succession, sequestrator, trustee or administrator of another legal person.

332. Every legal person has a name which is assigned to it upon being constituted, and under which it exercises its rights and executes its obligations.

The name of a legal person shall conform to law and include, where required by law, an expression that clearly indicates juridical form.

333. A legal person may engage in an activity or identify itself under a name other than its own name provided that a notice to that effect is filed in the registry of associations and enterprises.

334. The domicile of a legal person is at the place and address of its declared seat.

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

336. Legal persons are distinct from their members. Their acts bind none but themselves, except as provided by law, particularly in respect of certain associations, companies or partnerships formed pursuant to this Code.

337. Legal persons act through their organs. Unless otherwise provided by law or the articles, the organs are, more particularly, the board of directors and the general meeting of the members.

338. The directors and senior officers of a legal person represent and obligate the legal person to the extent of the powers vested in them by law or the articles.

339. The functioning, the administration of the patrimonium and the activities of a legal person are regulated by law and by its articles, which comprise the constituting document and the by-laws.

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

340. The articles of the legal person shall set out the contractual relations existing between the legal person and its members.

341. A legal person exists in perpetuity unless otherwise provided by law or the articles.

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

343. In case of fraud with regard to the legal person, the court may, on a motion by an interested person, hold the founders, directors, other senior officers or members of the legal person liable, to the extent it indicates, for any damage suffered by the legal person.

The members and founders may be held liable only if they participated in the alleged act and have derived personal profit therefrom.

344. In no case may a legal person set up juridical personality against a third person in good faith in order to dissemble fraud.

345. A legal person not constituted under the law of Québec is governed, with respect to its status and powers by the law of the place where it was formed, subject, with respect to its activities, to the law of Québec.

SECTION III

REGISTRATION OF LEGAL PERSONS

346. The registration of a legal person is effected by filing the constituting document or a declaration made according to law in the registry of associations and enterprises.

347. The constituting document or the declaration shall set forth, in particular, the name and domicile of the legal person, the juridical form it assumes and, where applicable, its object, its capital structure, its duration and, in the case of a partnership formed under this Code, the names of the members.

Notice of any amendment to the constituting document or the declaration in respect of any of the particulars shall be filed without delay in the registry of associations and enterprises.

348. Third persons in good faith are not presumed to have knowledge of the content of a document concerning a legal person merely because the document has been filed in the registry of associations and enterprises.

349. Where the constituting document or the declaration is incomplete, inaccurate or irregular, the legal person or one of its members may file a regularizing document in the registry if the insertion

or rectification does not infringe on the rights of the members or of third persons.

350. No regularizing document susceptible of infringing upon the rights of the members or of third persons may be filed unless ordered by the court, after hearing the interested persons and, if necessary, amending the proposed document.

351. The regularizing document is deemed to be part of the constituting document or the declaration, and to have taken effect simultaneously with it unless a later date is provided in the regularizing document or in the judgment.

352. A legal person may, within a reasonable time, ratify an act performed in its interest before it was constituted; it is then substituted for the person who acted for it.

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

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

SECTION IV

OBLIGATIONS AND DISQUALIFICATION OF ADMINISTRATORS

354. A director is deemed the mandatary of the legal person. He shall, in the performance of his duties, conform to the obligations imposed on him by law or by the articles and he shall act within the limits of the powers conferred on him and in view of their intended purposes.

355. A director shall act with the care, prudence and diligence of a reasonable person in similar circumstances.

He shall also act with honesty and loyalty in the best interests of the legal person and respect its object and intended purpose.

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

357. A director shall abstain from putting himself in a situation where his personal interest is in conflict with his obligations as a director.

A director shall notify the legal person of any interest he has in an enterprise or association susceptible of placing him in a situation of conflict of interest and of any right of action he has against it, indicating their value, where that is the case. The notification shall be recorded in the minutes of the proceedings of the board of directors or the equivalent.

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

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

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

360. Minors, persons of full age under tutorship or curatorship, bankrupts and persons prohibited by the court from holding such office are not qualified to act as directors.

Notwithstanding the first paragraph, minors and persons of full age under tutorship may act as directors of associations that concern them directly.

361. The court, on the motion of any interested person, may prohibit a person from holding office as a director of a legal person if the person has been found guilty of an indictable offence involving fraud or dishonesty in a matter related to legal persons, or who has repeatedly been found in default to comply with the Acts relating to legal persons or to respect his obligations as a director.

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

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

363. The clerk of the court which pronounces or lifts the prohibition shall transmit a copy thereof without delay to the registry of associations and enterprises.

SECTION V

JUDICIAL CONFERMENT OF PERSONALITY

364. The court may, retroactively, confer juridical personality on a legal person which, before its registration, acted as a legal person and had publicly, continuously and unequivocally, all the appearances of a legal person both to its members and to third persons.

The authority that should originally have controlled the constitution of the person shall give prior consent to the application.

365. Any interested person may intervene in the proceedings. He may also bring an action against the judicial conferment of personality in fraud of his rights.

366. The judgment confers juridical personality from the date it indicates.

Copy of the judgment shall be transmitted without delay by the clerk of the court to the registry of associations and enterprises.

CHAPTER II

PROVISIONS APPLICABLE TO LEGAL PERSONS FORMED UNDER THIS CODE

SECTION I

FUNCTIONING OF LEGAL PERSONS

367. This section applies to legal persons formed under this Code to the extent that their articles do not provide otherwise.

§1.—*Administration*

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

The board of directors shall adopt and implement management by-laws, subject to approval by the members at the next meeting.

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

370. Every director is presumed to have approved the decisions taken by the board of directors.

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

He may, nevertheless, if he had a serious cause for not letting his dissent be known in due time, be exonerated of his liability.

372. The directors of a legal person are designated by its members.

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

373. The term of office of directors is one year; at the expiry of that period their term is renewed for the same period unless it is revoked.

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

375. The acts of a director or of a senior officer are not voidable on the sole ground of an irregularity of his designation or of his lack of qualification.

376. Where the directors are prevented from acting by a majority or in the specified proportion owing to an impediment or to systematic opposition by some of them, the others may act alone for conservatory acts; they also may, with the authorization of the court, act alone for acts requiring immediate action.

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

377. The board of directors shall keep the list of members and the books and registers necessary for the proper functioning of the legal person.

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

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

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

§2.—General meeting

379. The annual general meeting shall be convened by the board of directors, or following its directives, within six months after the close of the financial year.

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

380. The notice convening the annual general meeting shall indicate the day, time and place of the meeting and the agenda. It shall be sent to each member qualified to attend not less than ten but not more than forty-five days before the meeting.

Ordinary business such as the examination of the financial statements, the election of directors and, where such is the case, the appointment of the auditor need not be mentioned in the agenda of the annual meeting.

381. The notice convening the annual meeting shall be accompanied with the balance sheet, the statement of the results for the preceding financial year and a statement of debts and claims.

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

383. The proceedings of the general meeting are invalid unless the majority of the qualified votes are present or represented.

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

385. Decisions of the meeting are taken by a majority of the votes taken.

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

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

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

Unless the members otherwise resolve at the meeting called pursuant to the first paragraph, the legal person shall reimburse to the members the expenses reasonably incurred by them in holding the meeting.

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

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

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

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

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

389. If all the directors are in agreement, they may participate in a meeting of the board of directors by the use of a means that allows all the participants to hear each other, particularly by telephone.

SECTION II

DISSOLUTION AND LIQUIDATION OF LEGAL PERSONS

390. A legal person is dissolved by cancellation of its constituting document or by any other cause provided for by the constituting document or by law.

It is also dissolved where the court confirms the expiry of the term or the fulfilment of the condition attached to the constituting document, the accomplishment of the object for which the legal person was constituted or the impossibility of accomplishing that object.

391. A legal person may also be dissolved by consent of two-thirds of the votes taken at a general meeting convened expressly for that purpose.

The notice convening the meeting shall be sent at least thirty days but not over forty-five days before the meeting and not at an inopportune time.

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

393. The directors shall file a notice of the dissolution with the registry of associations and enterprises and proceed immediately with the liquidation; if they fail to do so, they may be held accountable for the acts of the legal person.

394. The liquidator of a legal person is appointed by the members according to the articles or, failing that, by the court.

Notice of the appointment, as also of any revocation, must be filed in the registry of associations and enterprises and published in the *Gazette officielle du Québec*. The appointment and revocation may be set up against third persons from such notice.

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

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

396. The liquidator shall first repay the debts, then effect the reimbursement of the capital.

Next, the liquidator shall partition the assets among the members in proportion to their interests or, otherwise, in equal portions, following if need be the rules relating to the partition of property in undivided ownership.

397. The liquidator shall dispose of the books and records of the legal person; he shall remit the minute-book to the public curator, who

shall have custody of it until the expiry of seven years from the end of dissolution.

398. Unless the liquidator obtains an extension from the court, the public curator shall undertake or continue a liquidation that is not terminated within seven years from the filing of the notice of dissolution.

The public curator has in the case of this article the same rights and obligations as a liquidator, but any residue devolves to the state.

399. The liquidation of a legal person is closed by the filing of notice of the closing in the registry of associations and enterprises."

2. A Book Three and a Book Four are added to the Civil Code of Québec, after article 659 at the end of Book Two, "The Family", and read as follows:

"BOOK THREE

SUCCESSIONS

TITLE ONE

OPENING OF SUCCESSIONS
AND QUALIFICATION FOR SUCCESSION

CHAPTER I

OPENING OF SUCCESSIONS

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

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

661. In determining succession, the law considers neither the origin nor the nature of property; all the property as a whole constitutes a single patrimonium.

662. When a person dies, leaving property situated outside Québec or claims against persons not resident in Québec, letters of verification may be obtained in the manner provided in the Code of Civil Procedure.

663. Where persons called to each other's succession die and it is impossible to determine which survived the other, they are deemed to have died at the same time.

The succession of each of the decedents then devolves to the persons who would have been called to take it in his place.

CHAPTER II

QUALIFICATION FOR SUCCESSION

664. Natural persons who exist at the time the succession devolves, including absentees deemed to be alive at that time and children conceived but yet unborn, if they are born alive and viable, as well as the state, may inherit.

Persons who, in the case of a substitution or trust, have the required qualifications when the disposition produces its effect in their regard, also may inherit.

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

A trustee may, on behalf of the trust, receive a legacy intended for a beneficiary or a legacy used to accomplish the object of the trust.

666. A successor to whom an intestate succession devolves or who receives a universal legacy or general legacy by testament is the heir from the opening of the succession, provided he accepts it.

667. The following persons are disqualified by operation of law for succession:

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

2. a person deprived of parental authority over his child while his child is exempted from the obligation of providing support, in respect of that child's succession.

668. The following persons may be declared unworthy for succession:

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

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

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

669. An heir described in article 667 or 668 is not disqualified by operation of law nor subject to being declared unworthy if the deceased knew the cause of the disqualification or unworthiness and yet made him benefit or did not modify the liberality when he could have done so.

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

671. The spouse of the deceased in good faith inherits if the marriage is annulled after the death, unless the spouse made the application himself or unless the court, in declaring the marriage null, decides otherwise in view of the circumstances.

TITLE TWO

RIGHTS OF SUCCESSION

CHAPTER I

SEIZIN

672. The heirs are seized, by the death of the deceased or by the event which gives effect to the legacy, of the patrimonium of the deceased, subject to the provisions on the liquidation of successions.

Notwithstanding the first paragraph, the heirs are not, unless by way of exception seized of the obligations of the deceased to a greater extent than the value of the property they receive, and they retain their right to demand payment of their claims from the succession.

The heirs are seized of the rights of action of the deceased against any person or that person's representatives, for breach of his personal rights.

CHAPTER II

PETITION OF INHERITANCE AND ITS EFFECTS ON THE TRANSMISSION OF PROPERTY

673. A successor is entitled to have his heirship recognized at any time within seven years from the opening of the succession to which he claims to be entitled or the day his right devolves.

674. An heir apparent shall restore to the true heir the property he has received from the succession, in its actual condition.

If it is impossible to return the property, the heir apparent shall restore the balance of the price received from its alienation and the property acquired through reinvestment of that price.

675. An heir apparent in bad faith is responsible for loss or deterioration of the property, even if it results from normal use.

He may be bound to restore to the true heir the value, from the time of the judgment, of the property that has been alienated.

676. An heir apparent in good faith acquires the fruits and revenues; an heir apparent in bad faith shall return them, computed from the day he began to be in bad faith.

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

678. Acts of alienation by onerous title performed by an heir apparent to the benefit of a third person in good faith may be set up against the true heir. Those by gratuitous title are not sufficient to be set up, subject to the rules on prescription.

679. Obligations of the deceased discharged by the heirs apparent otherwise than out of property from the succession shall be reimbursed by the true heirs.

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

CHAPTER III

THE RIGHT OF OPTION

SECTION I

DELIBERATION AND OPTION

681. Every successor has the right to accept or to renounce the succession.

The option is indivisible, although a successor called to more than one succession has a separate right of option for each succession.

682. A successor has six months from the day his right devolves to deliberate and exercise his option. The period is extended of right by as many days as necessary to afford him sixty days from the close of the inventory.

During the period for deliberation, no judgment may be rendered against the successor as an heir unless he has already accepted the succession.

683. If a successor aware of his heirship does not renounce within the period for deliberation, he is presumed to have accepted unless the period has been extended by the court.

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

If a successor does not exercise his option within the time determined by the court, he is presumed to have renounced.

684. If the successor renounces within the period for deliberation, the lawful expenses incurred to that time are borne by the succession.

685. If the successor dies before exercising his option, his heirs shall deliberate and exercise the option within the period allotted for deliberation and option in respect of the succession of their ancestor.

Each of the heirs of the successor exercises his option separately; the share of an heir who renounces accrues to his co-heirs.

686. A person may cause the option he has exercised to be cancelled, within seven years from the day his right devolved, on one of the grounds of nullity of contracts, particularly on the discovery of a will he was unaware of when he exercised his option.

SECTION II

ACCEPTANCE

687. Acceptance is express or tacit. It may also result from the law.

Acceptance is express where the successor assumes the name or capacity of accepting heir in a writing; it is tacit where the successor performs an act that necessarily implies his intention of accepting.

688. A succession devolving to a minor, even an emancipated minor, or to a person of full age under protective supervision is deemed to be accepted unless the person of full age or the emancipated minor, assisted by his adviser or his tutor, or the tutor or curator with the

authorization of the tutorship council, renounces it within the time for deliberation and option.

In no case is the minor or the person of full age under protective supervision liable for payment of debts of the succession amounting to more than the value of the property he receives.

689. The fact that the successor exempts the liquidator from making an inventory or confounds property of the succession with his personal property, unless the property was confused before the death, necessarily implies acceptance of the succession.

690. The succession is presumed to be accepted where the successor, knowing that the liquidator refuses or is neglecting to make the inventory, himself neglects, within sixty days after the expiration of the six months for deliberation, either to make an inventory or to apply to the court to replace the liquidator or order him to proceed to the inventory.

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

The same rule applies to renunciation in favour of one or more co-heirs, even by gratuitous title, and to renunciation by onerous title, even though it be in favour of all the co-heirs without distinction.

692. Mere conservatory acts and acts of supervision and provisional administration, particularly the payment of funeral expenses and expenses related to the final illness, do not, by themselves, entail acceptance of the succession.

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

693. The partition of the medals, diplomas, clothing and private papers of the deceased and family souvenirs does not by itself entail acceptance if it is done with the concurrence of all the successors.

The same rule applies to the acceptance, by a successor, of the transmission in his favour of a site intended for a dead body or ashes.

694. If a succession includes perishable goods, the successor may, before the designation of a liquidator sell them by agreement or, if he cannot find a buyer in due time, give them to charitable institutions, without implying acceptance on his part.

He may, following the rules in the Code of Civil Procedure, sell movable property which, although not perishable, is costly to preserve or is of a kind that depreciates rapidly.

695. Acceptance completes the transmission which took place by operation of law at the time of death.

SECTION III

RENUNCIATION

696. Renunciation is express. It may also result from the law.

Express renunciation is made by notarial deed *en minute* or by judicial declaration in writing.

697. A person who renounces is deemed never to have been a successor, and the succession devolves as if he had never existed.

698. A successor may renounce the succession provided that he has not performed any act entailing acceptance and that no judgment having force as a *res judicata* has been rendered against him as an heir.

699. A successor who has renounced the succession retains, for seven years from the day his right devolved, the faculty of accepting it if it has not been accepted by another person entitled to it.

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

The heir takes the succession in its actual condition and without prejudice to the rights acquired by third parties to the property in it.

700. A successor who has been unaware of his heirship or remained unknown for seven years from the day his right devolved is deemed to have renounced the succession.

701. A successor who, in bad faith, has abstracted or concealed property of the succession or failed to include property in the inventory is deemed to have renounced the succession notwithstanding any prior acceptance.

702. The creditor of a person who renounces may, within one year following the renunciation, be authorized by the court to accept the succession in lieu of his debtor, if the renunciation is prejudicial to him.

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

CHAPTER IV

SURVIVAL OF OBLIGATION TO PROVIDE SUPPORT

703. Every creditor of support or any person who at the time of the death was a dependant of the deceased may within one year after the death claim a financial contribution from the succession as support.

The right exists even where the creditor is an heir or where the right to support was not exercised before the date of the death, but does not exist in favour of a person disqualified as a successor to the deceased by operation of law or declared unworthy to be such.

704. The contribution shall be made in the form of a lump sum payable in cash or by instalments; it may also be wholly or partly made in the form of an annuity if it is payable to the spouse or a descendant.

It shall be fixed with the concurrence of the liquidator of the succession acting with the consent of the heirs and particular legatees or, failing agreement, by the court.

705. In fixing the contribution, the needs and means of the claimant, his circumstances and the benefits he derives from the succession are taken into account.

Account is also taken of the assets of the succession, the needs and means of the heirs and particular legatees and, where such is the case, the right of other persons to support.

706. Where the contribution is claimed by the spouse or a descendant, the value of the liberalities made by the deceased by act *inter vivos* during the three years preceding the death and those taking effect at the death are deemed to be part of the succession for the fixing of the contribution.

707. The contribution granted to the spouse or to a descendant shall not exceed the difference between the share he could have claimed had the entire succession, including the liberalities, devolved by legal succession, and what he receives.

In other cases, it shall not exceed the value of six months' support.

708. Where the contribution is granted in the form of an annuity, it shall be paid, failing agreement between the parties, for such time as the court determines and on the terms and conditions it fixes.

The court may oblige the heirs or particular legatees to furnish security and order the transfer of certain property in trust to guarantee payment of the contribution.

709. Any judgment awarding a contribution is subject to review whenever circumstances warrant.

710. Where the assets of the succession are insufficient to make full payment of the contributions to the spouse or to a descendant, as a result of the liberalities made by acts *inter vivos* during the three years preceding the death or taking effect at the death, the court may order the liberalities reduced.

Notwithstanding the foregoing, liberalities to which the spouse or descendant consented shall not be reduced and those he has received shall be debited from his claim.

711. Any alienation, security or charge granted by the deceased for consideration of far smaller value than that of the property at the time it was made is presumed to be a liberality.

712. Sums exigible under a contract of insurance of persons, where the sums would have been part of the succession had it not been for the designation of a subsidiary owner or a beneficiary during the three years preceding the death, are ranked as liberalities.

Premiums and contributions paid by the deceased to a retirement plan or pension plan during the three years preceding the death are also ranked as liberalities.

713. The cost of education or maintenance and customary presents are not considered to be liberalities unless, considering the means of the deceased, they are manifestly exaggerated.

714. Reduction of the liberalities may operate against only one of the beneficiaries or against several of them simultaneously.

If need be, the court shall fix the share that each of the beneficiaries sued or impleaded shall pay.

715. The amount which the beneficiary of the liberality is bound to pay towards the claim bears interest from the application for reduction.

716. Payment of the reduction shall be made, failing agreement between the parties, on the conditions fixed by the court and on the terms and conditions of warranty and payment it fixes.

Payment in kind shall not be ordered, but the debtor may relieve his debt at any time by handing over the property.

TITLE THREE

LEGAL DEVOLUTION OF SUCCESSION

CHAPTER I

HEIRSHIP

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

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

CHAPTER II

RELATIONSHIP

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

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

721. The direct line is the series of degrees between persons descended one from another. The number of degrees in the direct line is equal to the number of generations between the successor and the deceased.

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

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

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

CHAPTER III

REPRESENTATION

724. Representation is a favour granted by law by which a relation is called to a succession which his ascendent, who is a closer relation of the deceased, would have taken but is unable to take himself, having died previously or at the same time or being disqualified or unworthy.

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

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

726. Representation does not take place in favour of ascendants, the nearer ascendant in each line excluding the more distant.

727. In the collateral line, representation takes place, between privileged collaterals, in favour of the descendants in the first degree of the brothers and sisters of the deceased, whether or not they compete with them and, between ordinary collaterals, in favour of the other descendants of the brothers and sisters of the deceased in other degrees, whether they are in equal or unequal degrees of relationship to each other.

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

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

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

CHAPTER IV

ORDER OF DEVOLUTION OF SUCCESSION

SECTION I

DEVOLUTION TO THE SURVIVING SPOUSE AND TO DESCENDANTS

730. If the deceased leaves a spouse and descendants, the succession devolves to them.

The spouse takes one-half of the succession if he competes with only one descendant in the first degree or those representing him; otherwise, he takes one-third and the descendant, the other two-thirds.

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

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

If there is representation, they share by roots.

733. Unless there is representation, the descendant in the closest degree takes the share of the descendants, to the exclusion of all the others.

SECTION II

DEVOLUTION TO THE SURVIVING SPOUSE AND TO PRIVILEGED ASCENDANTS OR COLLATERALS

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

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

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

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

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

738. Where there are no descendants nor surviving spouse, the succession is partitioned equally between the privileged ascendants and the privileged collaterals.

Where there are no privileged ascendants, the privileged collaterals inherit the entire succession, and vice versa.

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

Where only one of the privileged ascendants inherits, he takes the share that would have devolved to the other.

740. Where the privileged collaterals who inherit are full blood relations of the deceased, they share equally or by roots, as the case may be.

In the opposite case, the share devolved to them is divided equally between the paternal and maternal lines of the deceased; persons fully related by blood partake in both lines and those half related by blood partake in their own line only.

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

SECTION III

DEVOLUTION TO ORDINARY ASCENDANTS AND COLLATERALS

741. The ordinary ascendants and collaterals are not called to the succession unless the deceased left no spouse or descendants nor privileged ascendants or collaterals.

742. If the ordinary collaterals include descendants of the privileged collaterals, these descendants take one-half of the succession and the other half devolves to the ascendants and the other collaterals.

Failing descendants of privileged collaterals, the entire succession devolves to the ascendants and the other collaterals, and vice versa.

743. The succession devolving to the ordinary ascendants and the other collaterals of the deceased is divided equally between the paternal and maternal lines.

In each line, the persons who inherit share by heads.

744. In each line, the ascendant in the second degree takes the share allotted to his line, to the exclusion of all the other ordinary ascendants or collaterals.

Where in one line there is no ascendant in the second degree, the share allotted to that line devolves to the nearest ordinary collateral descended from that ascendant.

745. Where in one line there are no ordinary collaterals descended from the ascendants in the second degree, the share allotted to that line devolves to the ascendants in the third degree or, if there are none, to the closest ordinary collaterals descended from them, and so on until no relations within the degrees of succession remain.

746. If there are no relations within the degrees of succession in one line, the relations in the other line inherit the entire succession.

747. Relations beyond the seventh degree do not inherit.

CHAPTER V

DEVOLUTION TO THE STATE

748. The state takes the succession where all the other successors have renounced the succession or where no other successor is known or claims the succession.

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

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

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

750. Subject to the Acts respecting public curatorship and without any other formality, the public curator shall act as liquidator of the succession. He shall make an inventory and give notice of the devolution in the *Gazette officielle du Québec*; he shall also cause the notice to be published in a newspaper circulated in the locality where the deceased was domiciled.

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

The public curator shall give notice of the liquidation in the same manner as in the case of a notice of devolution; he shall, in the notice, indicate the residue of the succession and the time within which every other successor may assert his rights of heirship.

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

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

753. The heir who claims the succession takes it in its actual condition at that time, subject to his right to claim damages if the legal formalities have not been followed.

TITLE FOUR

WILLS

CHAPTER I

THE NATURE OF WILLS

754. Every person having the required capacity may, by will, provide otherwise than as by law for the transmission upon his death of the whole or part of his property.

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

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

756. A will may contain only dispositions regarding the liquidation of the succession, the revocation of previous testamentary dispositions or the exclusion of an heir.

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

CHAPTER II

THE CAPACITY REQUIRED TO MAKE A WILL

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

759. No minor may dispose of any part of his property by will, except small articles of little value.

760. A will made by a person of full age after he has been placed under tutorship may be probated by the court if the nature of its dispositions and the circumstances in which it was drawn up allow it.

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

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

CHAPTER III

FORMS OF WILLS

SECTION I

GENERAL PROVISIONS

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

764. The formalities governing the various kinds of wills shall be observed on pain of absolute nullity.

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

765. A will made in the presence of witnesses that would be null by reason of inobservance of a formality may nevertheless be valid if the court is convinced, after hearing the interested parties, that the writing unquestionably and unequivocally contains the last wishes of the deceased.

766. No person may cause the validity of his will to be subject to any formality not required by law.

SECTION II

NOTARIAL WILLS

767. A notarial will shall be made before a notary *en minute*, in the presence of a witness or, in certain cases, two witnesses.

The date and place of the making of the will shall be noted on the will.

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

The will, after being read, shall be signed, in each other's presence, by the testator, the notary and the witness or witnesses.

769. The formalities governing notarial wills are presumed to have been observed even when this is not expressly stated, subject to the Acts respecting notaries.

Notwithstanding the foregoing, where special formalities are attached to certain wills, the cause of their observance shall be mentioned in the instrument.

770. The notarial will of a testator unable to sign shall contain his declaration that he is unable to sign. This declaration, also, shall be read by the notary to the testator in the presence of two witnesses, and compensates for the absence of the signature of the testator.

771. The notarial will of a blind person shall be read by the notary to the testator in the presence of two witnesses.

In the will, the notary shall declare that he has read the will in the presence of the witnesses, and this declaration also shall be read.

772. The will of a deaf person or a deaf mute shall be read by the testator himself in the presence of the notary alone, or, if he chooses, of the notary and a witness. If the testator is only deaf, he shall read the will aloud.

In the will, the testator shall declare that he has read it in the presence of the notary and, where such is the case, the witness.

In the case of a deaf mute, the declaration also shall be read by the notary to the testator in the presence of the witness; in the case of a deaf person, it shall be read aloud by the testator himself, in the presence of the notary and the witness.

773. A person unable to express himself aloud who wishes to make a notarial will shall convey his wishes to the notary in writing.

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

775. The notary before whom a will is made may be designated in the will as the liquidator, provided his discharge of that office is gratuitous.

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

Any person of full age may witness a notarial will, except an employee of the attesting notary who is not himself a notary.

SECTION III

HOLOGRAPH WILLS

777. A holograph will shall be written entirely by the testator with his own hand and signed by him without the use of any mechanical process.

It is subject to no other formal requirement.

SECTION IV

WILLS MADE IN THE PRESENCE OF WITNESSES

778. A will made in the presence of witnesses shall be written by the testator or by a third person.

After making the will, the testator shall declare in the presence of two witnesses of full age that the document he is presenting is his will. He need not divulge its contents. He shall sign it at the end or, if he has already signed it, acknowledge his signature; he may also cause a third person to sign it for him in his presence and according to his instructions.

The witnesses shall thereupon sign the will in the presence of the testator.

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

The absence of initials or a signature on each page does not prevent a will made before a notary that is not valid as a notarial will from being valid as a will made in the presence of witnesses, if the other formalities are observed.

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

781. A person unable to speak but able to write may make a will in the presence of witnesses, provided he indicates in writing, otherwise than by a mechanical process, in the presence of the witnesses, that the writing he is presenting is his will.

CHAPTER IV

TESTAMENTARY DISPOSITIONS AND LEGATEES

SECTION I

VARIOUS KINDS OF LEGACIES

782. Legacies are of three kinds: universal, by general title or by particular title.

783. A universal legacy entitles one or several persons to take an entire succession.

784. A legacy by general title entitles one or several persons to take

1. the ownership of an aliquot share of the succession;

2. the usufruct of the whole or of an aliquot share of the succession;

3. the ownership or the usufruct of the whole or an aliquot share of the general immovable or movable general property, private property or acquests or general corporeal or incorporeal property.

785. All other legacies are by particular title.

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

787. Property left by the testator for which he made no disposition or respecting which the dispositions of his will are without effect remains in his intestate succession and devolves to his successors.

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

The formal or otherwise sufficient expression of the intentions of the testator takes precedence over the rules referred to in the first paragraph and the meaning ascribed to certain terms, where it gives another meaning and produces a different effect.

SECTION II

LEGATEES

789. A universal legatee or legatee by general title is the heir upon the opening of the succession provided he accepts the legacy.

790. A particular legatee who accepts the legacy is not an heir, but is seized as an heir of the property of the bequest by the death of the deceased or by the event giving effect to his legacy.

A particular legatee is seized of the obligations of the deceased relating to the property of the bequest only where the other property of the succession is insufficient to pay the debts, in which case he is liable only up to the value of the property he takes.

791. In order to receive his legacy, the particular legatee is required to have the same qualifications as for succession.

A particular legatee may be disqualified or declared unworthy to receive on the same grounds as for succession; like a successor, he may apply to the court to declare an heir or a co-legatee by particular title unworthy.

792. Like a successor, a particular legatee has a right to deliberate and exercise his option regarding the legacy made to him, with the same effects and according to the same rules.

793. The provisions of this Code respecting the respective rights and obligations of the heir apparent and the true heir and respecting the setting up of the acts of the former against the latter are also applicable, adapted as required, to the particular legatee.

In all other respects, the particular legatee is subject to the provisions of this book respecting legatees.

SECTION III

THE EFFECT OF LEGACIES

794. Fruits and revenues from the property bequeathed are to the benefit of the legatee from the opening of the succession or the time when the disposition takes effect in his favour.

795. Bequeathed property is delivered, with its dependencies, in the condition it was in when the testator died.

This rule also applies to the rights attached to bequeathed securities, if they have not yet been exercised.

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

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

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

The right of the legatee to a legacy made under a condition also is transmissible unless the condition is of a purely personal nature.

799. The testator, regardless of the form of the will, may insure the right to the legacy by offering sufficiently identified property of the succession as security for a hypothec or other form of guarantee.

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

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

SECTION IV

LAPSE AND NULLITY OF LEGACIES

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

A legacy also lapses when the legatee refuses it, is disqualified from taking it or is declared unworthy to receive it or, again, where he dies before the fulfilment of the suspensive condition attached to it, if the condition is of a purely personal nature.

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

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

803. Where a legacy charged with another legacy lapses from a cause depending on the legatee, the subsidiary legacy does not lapse for that reason unless the charge is of a purely personal nature.

The subsidiary is deemed to constitute a separate bequest and to be a charge upon the heir or particular legatee called to take the bequest under the lapsed legacy.

804. A legacy made to the liquidator as remuneration lapses if he does not accept the office.

This is also the case where a legacy is made to remunerate the person appointed by the testator as tutor to a minor child or designated by him to act as the administrator of the property of others.

805. A remunerative legacy is cancelled where the liquidator, the tutor or the administrator of the property of others designated by the testator ceases to hold office as such; he has in this case a right to remuneration proportionate to the value of the legacy and the time for which he held the office.

806. Accretion takes place in favour of the particular legatees where property is bequeathed to them jointly and a lapse occurs with regard to one of them.

807. A particular legacy is presumed to be made jointly if it is made by one and the same disposition and if the testator has not allotted

each coparcener's share of the bequeathed property or has allotted them equal aliquot shares.

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

809. A condition that is impossible or that is contrary to public policy is deemed null.

810. A penal clause intended to prevent an heir or a particular legatee from contesting the validity of the will or any part of it is deemed null.

The same is true of an exharedation taking the form of a penal clause intended for the same purpose.

811. A legacy made to the notary before whom a will is executed is void but this does not affect the other dispositions of the will.

The same is true of a legacy made to the spouse of the notary or to a relation in the first degree of the notary.

812. A legacy made to a witness, even a supernumorary, is void, but this does not affect the other dispositions of the will.

The same is true of that part of the legacy made to the liquidator or another administrator of property of others designated in the will which exceeds his remuneration, if he acts as a witness.

813. A bequest of property of other is invalid, unless it appears that the intention of the testator was to oblige the heir to obtain the bequeathed property for the particular legatee.

814. If the execution of a charge becomes too burdensome for the heir or the particular legatee, the court, after hearing the interested persons, may change it or revoke it, taking account of the value of the legacy, the intention of the testator and the circumstances.

CHAPTER V

REVOCATION OF WILLS AND LEGACIES

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

816. Marriage entails revocation of previous wills unless the testator manifested the intention of maintaining the testamentary dispositions despite that possibility or unless, knowing that the marriage was imminent, the testator made the will.

817. A legacy made to the spouse before divorce is revoked unless the testator manifested the intention of benefitting the spouse despite that possibility or unless, knowing that divorce was imminent, the testator benefitted the spouse.

Revocation of the legacy entails revocation of the designation of the spouse as liquidator of the succession.

818. Express revocation is made by a subsequent will explicity declaring the change of intention.

A revocation that does not specifically refer to the revoked instrument does not cease to be express.

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

A revocation contained in a will that is void for failure to observe a compulsory formality is void.

820. The destruction, tearing or erasure of a holograph will or of a will made in the presence of witnesses entails revocation if it is established that this was done deliberately by the testator or on his instructions. Similarly, the erasure of any disposition of a will entails revocation of the legacy made by that disposition.

Revocation is entailed also where the testator was aware of the destruction or loss of the will and could have replaced it.

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

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

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

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

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

823. Revocation of a previous express or tacit revocation does not revive the original disposition, unless the testator manifested a contrary intention or unless such intention is apparent from the circumstances.

CHAPTER VI

PROOF AND PROBATE OF WILLS

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

The heirs and the particular legatees shall be summoned to the probate of the will unless an exemption is granted by the court.

825. No person having acknowledged a will may thereafter contest its validity, although he may bring a demand to probate it.

826. In the case of contestation of an already probated will, the burden is on the contestant to prove the origin and regularity of the contestation.

827. In no case may a will that is not produced be probated; it must be reconstituted following an action in which the heirs, the other successors and the particular legatees have been impleaded and the proof of its contents, origin and regularity must be certain and unequivocal.

828. Proof by testimony of a will that cannot be produced is admissible if the will has been lost or destroyed, or is in the possession of a third person, without the collusion of the person who wishes to give the testimony.

TITLE V

LIQUIDATION OF SUCCESSIONS

CHAPTER I

OBJECT OF LIQUIDATION AND SEPARATION OF PATRIMONIUMS

829. The liquidation of an intestate or testate succession consists in identifying and designating the successors, determining the content of the succession, recovering the claims, paying the debts of the succession, whether these be debts of the deceased, charges on the succession or debts for support, paying the particular legacies, rendering an account, partition and delivering the property.

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

The liquidator may even claim the property against them.

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

832. The patrimonium of the deceased is separate from that of the heir by operation of law until the succession has been liquidated.

The separateness operates in respect of both the creditors of the succession and the creditors of the heir or particular legatee.

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

834. The property of the heir is used to pay the debts of the succession only in the case where the heir is liable for debts of greater value than the property he takes and the property of the succession is insufficient.

In the case described, payment of the creditor of the succession comes only after payment of the creditor of each heir whose claim arose before the opening of the succession. However, a creditor of the heir

whose claim has arisen since the opening of the succession is paid concurrently with the unpaid creditors of the succession.

CHAPTER II

LIQUIDATOR OF THE SUCCESSION

SECTION I

DESIGNATION AND RESPONSIBILITIES OF THE LIQUIDATOR

835. Any person of full age capable of exercising his civil rights may hold the office of liquidator.

A legal person authorized by law to administer the property of others may hold the office of liquidator.

836. The office of liquidator may be held by one or several persons. It devolves as of right to the heirs unless the testator designated a liquidator and he has accepted the office.

Where the office devolves to several heirs, they may designate the liquidator by a majority vote and provide his mode of replacement.

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

838. A testator may designate a liquidator; he may also provide his mode of replacement.

A person designated by a testator to liquidate the succession or execute his will has capacity as liquidator whether he was designated administrator of the succession, testamentary executor or otherwise.

839. Persons holding the office of liquidator together shall act in concert, unless exempted therefrom by the will or, failing testamentary disposition, by the heirs.

If one of the liquidators is prevented from acting, the others may perform alone acts of a conservatory nature and acts requiring dispatch.

840. The court may, on the application of an interested person, designate or replace a liquidator failing agreement among the heirs or if it is impossible to appoint or to replace the liquidator.

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

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

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

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

843. If a liquidator required to take out liability insurance or to furnish other security fails or refuses to do so within the time prescribed by the heirs or by the court, he forfeits his office, unless exempted by the court.

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

845. During proceedings, the liquidator continues to hold office unless the court decides to designate an acting liquidator.

846. Where the liquidator is not designated, delays to accept or decline the office or is to be replaced, any interested person may apply to the court to have seals affixed, an inventory made, an acting liquidator appointed or any other order rendered which is necessary to preserve his rights. These measures benefit all the interested persons but create no preference among them.

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

847. Acts performed by a person who, in good faith, believed he was liquidator of the succession are valid and may be set up against all persons.

SECTION II

INVENTORY OF THE PROPERTY

848. The liquidator, on pain of forfeiture of office, shall make an inventory in the manner prescribed in the title on the administration of the property of others.

849. Notice of closure of the inventory shall be filed with the director of civil status. The place where the inventory may be consulted by interested persons shall be mentioned in the notice.

850. The liquidator shall notify the heirs, the successors who have not yet exercise their option and the particular legatees of the filing of the notice of closure and of the place where the inventory may be consulted, and shall transmit a copy of the inventory to them if that may be easily done.

851. The creditors of the succession, the heirs, the successors and the particular legatees may contest the inventory or any item in it; they may also concur on the revision of the inventory or demand the making of a new inventory.

852. Where an inventory has already been made by an heir or another interested person, the liquidator shall verify it and ascertain that the notice of closure has been filed with the director of civil status and that everyone who should be notified has been notified.

853. The liquidator may be exempted from making an inventory, but only with the consent of all the heirs and successors.

If they give the consent, the heirs and successors having by that fact become heirs are liable for the debts of the succession beyond the value of the property they take.

854. Where the heirs, knowing that the liquidator refuses or is neglecting to make the inventory, themselves neglect, for sixty days following the expiration of the six month period for deliberation, either to proceed to the inventory or to move that the court replace the liquidator or enjoin him to proceed to the inventory, they may be held liable for the debts of the succession beyond the value of the property they take.

855. Heirs who, before the inventory, confound the property of the succession with their personal property, unless the property was already confused before the death, such as in the case of cohabitation, may be held liable for the debts of the succession amounting to more than the value of the property they take.

If the confusion arises after the inventory but before the end of the liquidation, they may be held personally responsible for the debts up to the value of the confused property.

SECTION III

FUNCTIONS OF THE LIQUIDATOR

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

857. The liquidator shall make a search to ascertain whether the deceased made a will.

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

858. The liquidator shall administer the succession. He shall realize the property of the succession to the extent necessary to pay the debts and particular legacies.

859. A liquidator who alienates movable property shall proceed according to the Code of Civil Procedure unless the property is perishable, or unless he obtains the consent of all the heirs who have assumed payment of the debts of the succession beyond the value of the property they take or who are liable therefor consent to another form of alienation.

860. In no case may a liquidator alienate immovable property, except in case of need or obvious advantage, without the consent of all the heirs who have assumed payment of the debts of the succession beyond the value of the property they take or who are liable therefor.

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

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

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

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

CHAPTER III

PAYMENT OF DEBTS AND PARTICULAR LEGACIES

SECTION I

PAYMENTS BY THE LIQUIDATOR

864. If the property of the succession is sufficient to pay all the creditors and particular legatees and if there are no proceedings pending, the liquidator shall pay the known creditors and particular legatees as and when they present themselves.

The liquidator shall pay the ordinary public utility bills and repay the outstanding debts as and when they become due or according to the agreed terms and conditions.

865. The liquidator shall pay, in the same manner as any other debt of the succession, whether payable in cash or by instalments, the allowance which the heirs and the surviving spouse concur on as compensation for the contribution of the spouse in property or services to the enrichment of the patrimonium of the deceased.

Failing agreement between the heirs and the surviving spouse, the liquidator shall pay the allowance awarded by the court.

866. Where the succession is not manifestly solvent, the liquidator is not permitted to pay the debts of the succession nor the particular legacies before the expiration of sixty days from the filing with the director of civil status of the notice of closure of inventory or from the exemption from making an inventory.

Notwithstanding the foregoing, the liquidator may, with the permission of the court, pay the ordinary public utility bills and the debts requiring immediate payment.

867. If proceedings are pending or if the property of the succession is insufficient, the liquidator is not permitted to pay any debt or particular legacy before drawing up a full statement and obtaining homologation by the court of a payment proposal which contains a provision for a reserve for the payment of any future judgment.

868. Where the property of the succession is insufficient, the liquidator shall pay, first, the hypothecary or preferred creditors, in their order of preference; next, he shall pay the other creditors, except the creditor of support, and if he is unable to fully repay them, shall pay them *pro rata* to their claims.

If property remains after the creditors have been paid, the liquidator shall pay the creditors of support, *pro rata* to their claims if he is unable to fully repay them; next, he shall pay the particular legatees.

869. The liquidator may alienate property bequeathed by particular title or reduce the particular legacies if the other property of the succession is insufficient to pay all the debts.

In the case of the first paragraph, the debt is apportioned among the particular legatees in proportion to their legacies. These legatees may be relieved by giving back their legacies or equivalent value.

870. If the property of the succession is insufficient to pay all the particular legatees, the liquidator shall pay, first, those having preference under the will and the legatees of a thing certain and determined; the other legatees shall then incur the reduction of their legacies *pro rata*, and the remainder shall then be partitioned among them *pro rata* to the value of each legacy.

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

SECTION II

PAYMENTS MADE BY THE HEIRS AND PARTICULAR LEGATEES

872. Known creditors and particular legatees who have been neglected in the payments made by the liquidator have, in addition to their right of action in damages against the liquidator, a right of action against the heirs and particular legatees paid to their detriment.

The creditors also have a subordinate right of action against the other creditors in proportion to their claims, taking account of causes of preference.

873. Creditors and particular legatees who, remaining unknown, do not present themselves until after the payments have been regularly made have a right of action against the heirs and against the particular legatees paid to their detriment unless the heirs and particular legatees prove that the creditors or legatees who remained unknown were not paid by reason of their lack of diligence.

In no case do they have any preference over the personal creditors of the heirs or legatees.

874. Where the reserve provided for in a payment proposal is insufficient, the creditor has, for the payment of his share of the

outstanding claim, an action against the heirs and particular legatees up to the amount they received and a subordinate right against the other creditors, in proportion to their claims, taking account of causes of preference.

875. A hypothecary creditor having an outstanding claim conserves, in addition to his personal action, a hypothecary action against the person who received the hypothecated property.

876. The sole heir to a succession is liable, up to the value of the property he takes, for all the debts remaining outstanding at the end of the liquidation.

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

877. A legatee by general title of the usufruct is solely liable to the creditors for the debts left unpaid by the liquidator, even for the capital, proportionately to what he receives, and also for the hypothecary debt affecting any immovable he has received.

The relative contributions of the legatee by general title of the usufruct and of the bare owner are established according to the rules prescribed in the Book on property.

878. A legatee by general title of the usufruct of the entire succession is, without recourse against the bare owner, liable for payment of any annuities or support established by the testator, and for payment of the interest on debts left unpaid by the liquidator.

879. The heirs are liable, as in the case of payment of the debts, for payment of the particular legacies left unpaid at the end of the liquidation, but never for more than the value of the property they take.

Notwithstanding the foregoing, if a legacy is imposed on a specific heir, the action of the particular legatee does not lie against the others.

880. The particular legatees are liable for payment of the debts and legacies left unpaid at the end of the liquidation only where the other property is insufficient.

Where a particular legacy is made jointly to several legatees, each of them is liable for the debts and legacies only in proportion to his share in the bequeathed property, subject to the rules on indivisible debts.

881. When a particular legacy includes a universality of assets and liabilities, such as a succession or a business concern, the legatee is solely liable for payment of the debts connected with the universality, subject to the subordinate right of action of the creditors against the heirs and particular legatees where the property of the universality is insufficient.

882. An heir or particular legatee who has paid part of the debts and legacies in excess of his share has an action against his co-heirs or co-legatees for the reimbursement of the excess over his share. His action lies, however, only for the share that each of them ought to have paid individually, even if he is subrogated to the rights of the person who was paid.

883. If one of the co-heirs or co-legatees is insolvent, his share of the payment of the debts or in the reduction of the legacies is divided among his co-heirs or co-legatees in proportion to their respective shares, unless one of the co-heirs or co-legatees agrees to pay the entire amount.

884. A usufruct established on bequeathed property is borne without recourse by the legatee of the bare ownership.

The same is true of servitudes, which are borne by the legatee of the affected property.

885. Where the rights of action of the unpaid creditors or particular legatees are exercised before partition, account shall be taken, in the composition of the shares, of the actions of the heirs or legatees against their co-heirs or co-legatees for the amount they paid in excess of their share.

Where the rights of action of the unpaid creditors or legatees are exercised after partition, those of the heirs or legatees who paid more than their share are exercised, where such is the case, according to the rules applicable to the warranty of coparceners, unless the instrument of partition stipulates otherwise.

886. The testator may change the manner and proportion in which the law holds his heirs and particular legatees liable for payment of the debts and reduction of the legacies.

The changes are not a sufficient objection against the creditors; they operate only between the heirs and the particular legatees, particularly in the composition of the shares in view of partition and in the application of the rules on warranty of coparceners.

887. An heir having assumed payment of the debts of the succession beyond the value of the property he takes or who is liable for them may be pursued on his personal property for his share of the debts left unpaid.

888. An heir having similarly to the case in article 887 assumed payment of the debts of the succession or liable therefor for having exempted the liquidator from making an inventory may, if he was in good faith, move that the court reduce his liability or limit it to the value of the property he has taken if new circumstances substantially change the extent of his liability, such as his discovery of new facts, or the coming forward of a creditor of whose existence he could not have been aware when he assumed the liability.

CHAPTER IV

END OF LIQUIDATION

889. Liquidation ends when the known creditors and particular legatees have been paid or when payment of their debts and legacies is otherwise settled or assumed by heirs or particular legatees.

It also ends when the assets are exhausted.

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

The final account indicates the debts and legacies left unpaid, those warranted by a bond or taken charge of by heirs or particular legatees and those the payment of which is settled otherwise, indicating the mode of payment for each. It establishes, where necessary, the necessary reserves for the execution of future judgments.

The liquidator shall append a proposal for partition to his account if the will or the majority of the heirs require it.

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

The cost of the account is borne by the succession.

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

892. After acceptance of the final account, the liquidator is discharged of his administration and shall make delivery of the property to the heirs.

Notice of closure of the account shall be filed with the director of civil status. The notice shall indicate the place where interested persons may consult the account.

TITLE SIX

PARTITION OF SUCCESSIONS

CHAPTER I

RIGHT TO PARTITION

893. In no case may partition take place or be applied for before the liquidation is terminated and the final account of the liquidator has been accepted.

894. Notwithstanding the foregoing, the testator may, for serious and legitimate cause, order partition wholly or partly deferred for a limited time. He may also order partition deferred if, to fully carry out his intentions, the rights, powers and obligations of the liquidator must continue to be held under another title.

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

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

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

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

899. Any heir who before the death actively participated in the operation of the family business or lived in the principal family residence may make an application to the court to maintain undivided ownership.

900. When deciding an application for the maintenance of undivided ownership, the court shall take into account the testamentary

dispositions, as well as the existing interests and the means of livelihood which the family and the heirs draw from the undivided property; at all stages of the case, the agreements among the partners or shareholders to which the deceased was a party shall be respected.

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

902. Maintenance of undivided ownership shall not be ordered for a duration of more than five years except with the agreement of all the interested persons.

It may be renewed until the death of the spouse or until the majority of the youngest child of the deceased.

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

904. If an application for the maintenance of undivided ownership contemplates a particular item of property or a group of properties, nothing prevents proceeding to partition of the residue of the property of the succession. Furthermore, the heirs may always satisfy an heir who objects to the maintenance of undivided ownership by paying his share themselves or granting him, after appraisal, certain other property of the succession.

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

906. An heir may exclude from the partition a person who is not an heir but to whom an heir transferred his right in the succession, by repaying him the value of the right at that time and his disbursements for costs related to the transfer.

CHAPTER II

CONDITIONS OF PARTITION

SECTION I

COMPOSITION OF SHARES

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

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

908. If the undivided shares are equal, as many shares shall be composed as there are heirs or coparcenary roots.

If the undivided shares are unequal, as many shares as necessary to allow a drawing of lots shall be composed.

909. In the making up of the shares, account shall be taken of the testamentary dispositions, particularly those charging certain heirs with payment of debts or legacies, as well as the rights of action the heirs have against each other for the amount they paid in excess of their undivided share; account shall also be taken of the rights of the surviving spouse, the applications for allotment by preference, the objections and, where such is the case, the reserve funds for settling future judgments.

Consideration may be given as well to, among other things, the fiscal consequences of the allotments, the intention shown by certain heirs to take charge of certain debts or the convenience of the mode of allotment.

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

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

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

911. Undivided owners making an amicable partition shall make up the shares as they see fit and reach a consensus on their allotment or on a drawing of lots for them.

If they consider it necessary to sell the property to be partitioned or some of it, they shall also reach a consensus on the conditions of sale.

912. Failing agreement among the undivided owners on the allotment of the shares, it is made by a drawing of lots.

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

SECTION II

PREFERENTIAL ALLOTMENTS AND CONTESTATION

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

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

915. Notwithstanding any objection or application for an allotment by preference presented by another coparcener, the business or the capital shares, stocks or other securities connected with the business are allotted by preference to the heir who was actively participating in the operation of the business at the time of the death.

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

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

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

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

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

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

SECTION III

DELIVERY OF TITLES

922. After partition, the titles common to the entire inheritance or to a part of it are delivered to the person the heirs have chosen to act as depositary, under the condition that he assist the coparceners in this matter at their request. Failing agreement on the choice, it is made by a drawing of lots.

923. Notwithstanding anything in this section, any heir may, at partition, apply for and obtain a copy of the titles to property in which he retains rights. The costs so incurred are shared.

CHAPTER III

RETURN

SECTION I

RETURN OF GIFTS AND LEGACIES

924. In view of partition, each co-heir shall return to the mass only what he has received from the deceased by gift or by will under an express obligation to return.

A successor who renounces the succession is not obliged to make any return.

925. A representative, in addition to what he is obliged to return in his own right, shall return what the person represented would have had to return, even if he has renounced the inheritance of the represented person.

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

Return is due only from one co-heir to another and is not due to the particular legatees nor to the creditors of the succession.

927. Return is made by taking less.

Any stipulation requiring the heir to make return in kind is void. However, the heir may elect to make the return in kind if he still owns the property, unless he has affected it with a usufruct, servitude, hypothec or other real charge.

928. Each co-heir to whom return by taking less is due shall pre-take from the mass of the succession property equal in value to the amount of the return.

As far as possible, pre-takings shall be made in property of the same kind and quality as that which must be returned.

If it is impossible to pre-take in the manner described, the heir returning may either pay the cash value of the property received or allow each co-heir to pre-take other equivalent property from the mass.

929. Return by taking less may also be made by debiting the cash value of the property received to the share of the heir.

930. Unless otherwise stipulated in the gift or will, property returned by taking less is appraised at the time of partition if it is still in the hands of the heir, or on the date of the alienation if the property was alienated before partition.

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

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

It is also reduced by the amount of the necessary expenditures.

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

932. The heir is entitled to retain the property returned in kind until he has been reimbursed the amounts he is owed.

933. An heir is not bound to return property which has been destroyed by a fortuitous event or without his fault. He shall, however, return any compensation paid to him for the loss of the property.

934. The coparceners may agree that property affected by a hypothec or other real right shall be returned in kind; return is then made without prejudice to the holder of the right. The obligation resulting therefrom is, in the partition of the succession, charged against the person who makes the return.

935. The fruits and revenues of the property given or bequeathed, if the property is returned in kind, or the interest on the amount returnable, are also returnable from the opening of the succession.

SECTION II

RETURN OF DEBTS

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

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

937. If the amount in capital and interest of the debt to be returned exceeds the value of the hereditary share of the heir who is bound to make the return, he remains indebted for the excess and shall pay it according to the conditions attached to the debt.

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

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

939. Return is made by taking less.

The deduction effected by co-heirs or the debiting of the amount to the share of the heir may be set up against the personal creditors of the heir who is bound to make the return.

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

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

CHAPTER IV

EFFECTS OF PARTITION

SECTION I

THE DECLARATORY EFFECT OF PARTITION

941. Partition is declaratory of ownership.

Each coparcener is deemed to have inherited, alone and directly, all the property included in his share or which devolves to him through licitation or through any other kind of partial or complete partition. He is deemed to have owned the property from the death, and never to have owned the other property of the succession.

942. Any act the object of which is to terminate undivided ownership between coparceners constitutes partition, even though the act is described as a sale, an exchange, a settlement or otherwise.

943. Subject to the provisions respecting the administration of undivided property and the juridical relationships between an heir and his assigns, acts performed by an undivided heir, or real rights granted by him in property which has not been allotted to him are insufficient to set up against any other undivided heirs who have not consented to them.

944. Acts validly made during undivided ownership resulting from death retain their effect, regardless of who, at partition, is allotted the property to which they apply.

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

945. The declaratory effect also applies to claims against third persons, to any assignment of these claims during the undivided ownership by one of the co-heirs, and to any seizure of the claims by the creditors of one of the co-heirs.

The provisions of this Code regarding service of notice of assignment of debts apply to assignments of debts resulting from partition.

SECTION II

WARRANTY OF COPARCENERS

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

Notwithstanding the first paragraph, each coparcener remains a warrantor for any eviction caused by his personal act.

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

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

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

The loss is appraised at its value on the day of the partition.

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

951. No action in warranty may be instituted within three years following eviction or discovery of the disturbance or following partition if it is caused by the insolvency of a debtor of the succession.

CHAPTER V

NULLITY OF PARTITION

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

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

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

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

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

BOOK FOUR

PROPERTY

TITLE ONE

KINDS OF PROPERTY AND ITS APPROPRIATION

CHAPTER I

KINDS OF PROPERTY

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

958. Land, plants and minerals as long as they are not separated or extracted from the land and structures and works fixed in the ground, together with all the movables forming an integral part of them, are immovables.

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

959. Movables forming an integral part of an immovable retain their immovable character if they are only temporarily detached from the immovable and are destined to be put back.

960. Movables which, without losing their individuality, are placed by their owner on his immovable for a permanency or are incorporated therewith are immovables for as long as they remain there.

In accordance with the foregoing, movables which the owner has placed on or incorporated with the immovable and which are allocated for its economic operation are immovables.

961. Real rights in immovables, as well as actions to assert such rights or to obtain possession of immovables, are immovables.

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

963. Claims and other incorporeal rights attested by a bearer instrument, and waves or energy harnessed and put to use by man,

whether its source is movable or immovable, are deemed corporeal movables.

964. All other property, if not qualified by law, is movable.

CHAPTER II

PROPERTY IN RELATION TO ITS PROCEEDS

965. Property, according to its relations to other property, may be divided into capital, and fruits and revenues.

966. Property allocated for the operation of an enterprise, shares of the capital stock or common shares of a legal person, property that produces fruits and revenues, the reinvestment of the fruits and revenues, the price for any disposal of capital or its reinvestment, and expropriation or insurance indemnities in replacement of capital, are deemed to be capital.

Capital also includes of intellectual or industrial property except sums derived therefrom without alienation of the rights, bonds and other loan certificates payable in cash and rights the exercise of which tends to increase capital property, such as the right to subscribe securities of a legal person or of a trust.

967. Everything produced by property without any alteration to its substance, everything procured by the use of property according to its destination and everything derived from the use of capital, such as the profit realized on the operations of an enterprise, is deemed to be fruits and revenues.

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

968. Fruits are natural and revenues are civil.

Things spontaneously produced by property or produced by the cultivation or working of land, and the produce and increase of animals are deemed to be fruits.

Sums of money yielded by or derived from property including rents, interest, arrears of rent, dividends, either in money or in shares, except those representing the distribution of the price of alienation of assets of a company, are deemed to be revenues, as are also sums received as consideration for the cancellation or renewal of a lease or for prepayment, or sums allotted or collected in similar circumstances.

CHAPTER III

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

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

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

970. Certain things such as water and air are not subject to appropriation, and their use, common to all, is governed by public statutes and, in certain respects, by this Code.

Notwithstanding the foregoing, water and air may be deemed to be objects of ownership if they are collected in man-made receptacles from which they cannot naturally escape.

971. Certain other things, being ownerless, are not subject to any right, but may nevertheless be appropriated by occupancy if the person taking them does so with the intention of becoming their owner.

972. Property belongs to the state or to persons or, in certain cases, is subject to appropriation.

Property of the state and property of public legal persons is governed by public law and, where the rules thereof require to be complemented, by this Code.

973. Property is acquired by contract, succession, occupancy, prescription, accession or any other mode provided by law.

Notwithstanding the first paragraph, no one may appropriate property of the state for oneself by occupancy, prescription or accession except such as one acquires by succession, vacancy or confiscation, so long as it is not confused with his other property. Similarly, no one may acquire property of public legal persons that is appropriated for public use.

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

975. Parts of the territory not yet owned by natural persons or legal persons are owned by the state and form part of the public domain. The state is presumed to have the original titles to such property.

976. The beds at high water of navigable and floatable lakes and watercourses, are property of the state.

The same is true of the beds at high water of non-navigable and non-floatable lakes and watercourses alienated by the state after 9 February 1918, although before that date ownership of the riparian land carried with it, upon alienation, the ownership of the beds at high water of non-navigable and non-floatable watercourses.

In any case, the law or the deed of concession may provide otherwise.

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

CHAPTER IV

CERTAIN *DE FACTO* RELATIONSHIPS CONCERNING PROPERTY

SECTION I

POSSESSION

§ 1.—*The nature of possession*

978. Possession is the exercise in fact, by a person himself or, in his name, by another person having detention of the property, of a real right, with the intention of acting as the holder of that right.

The intention is presumed. Where it is lacking, there is merely detention.

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

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

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

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

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

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

Successors by whatever title do not suffer from defects in the possession of their predecessor.

984. No thief, receiver of stolen goods or defrauder may invoke the effects of possession, but his successors by whatever title may do so.

§ 2.—*Effects of possession*

985. A possessor is presumed to hold the real right he is exercising. A person contesting that presumption has the burden of proving his own right and, as the case may be, that the possessor has no title, a defective title, or defective possession.

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

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

A possessor in bad faith shall, after compensating for the costs of production, return the fruits and revenues from the time he began to be in bad faith.

988. A possessor is in good faith if, when his possession begins, he is justified in believing he holds the real right he is exercising. His good faith ceases from the time his lack of title or the defects of his possession or title are notified to him by a civil proceeding.

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

SECTION II

ACQUISITION OF VACANT PROPERTY

§ 1.—*Ownerless property*

990. Property which has no owner, such as animals in the wild, or formerly in captivity but returned to the wild, aquatic fauna and property voluntarily abandoned by its owner, is ownerless property.

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

991. An ownerless movable belongs to the person who appropriate it for himself by occupancy.

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

992. An ownerless immovable is deemed to belong to the state. Any person may nevertheless acquire it by accession or prescription if the state does not have possession of it or does not declare itself the owner of it by depositing a notice of the public curator in the registry office of the place where the immovable is situated.

993. Ownerless property which the state appropriates for itself is administered by the public curator, who shall dispose of it according to law.

994. Treasure belongs to the finder if he finds it on his own land; if it is found on another person's land, one-half belongs to the owner of the land and one-half to the finder, unless the finder was acting for the owner.

§ 2.—*Lost or forgotten movables*

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

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

996. The finder of property shall attempt to find its owner; if he finds him, he shall return it to him.

997. The finder of lost property, in order to acquire ownership of it or of the price subrogated to it, by prescription, shall declare the fact that he has found it to the public curator, to a peace officer, to the municipality in whose territory it was found or to the person in charge of the place where it was found.

The finder in the case described may keep the property, dispose of it in the manner of a person having detention or hand it over for detention to the person to whom he made the declaration, at his option.

998. The holder of found property, including the state or a municipality may sell it if it is not claimed within thirty days.

The sale of the property shall be held by auction and at the expiry of not less than an additional ten days after publication, in a newspaper circulated in the place where the property was found, of a notice of sale stating the nature of the property and indicating the place, day and hour of the sale.

Notwithstanding the foregoing, the holder may dispose of the property immediately if it is perishable. He may also sell the property not sold at the auction by agreement, give it to a charitable institution or, if it is impossible to dispose of it in this way, destroy it.

999. The state or a municipality may sell movable property in its hands at auction, in the manner of the holder of the lost property, regardless of elapsed time other than that required for publication, in the following cases:

1. the owner of the property claims it but neglects or refuses to reimburse the holder for the cost of administration of the property within sixty days of claiming it;

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

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

1000. The holder of property entrusted to him for safekeeping, work or processing may dispose of it if it is not claimed within ninety days from completion of the work or the agreed time, after advising the interested person to fetch it within an allotted time of not less than thirty days. If the property is of considerable value, the notice shall be sent by registered or certified mail and the allotted time shall be at least six months. The property is then deemed forgotten.

1001. The holder of property entrusted but forgotten shall dispose of it by auction sale as in the case of found property, or by agreement. He may also give unsaleable property to a charitable institution and, if that is not possible, may dispose of it as he sees fit.

1002. Where the holder disposes of the lost or forgotten property, he remains indebted for the proceeds of the sale, after deducting the cost of its administration and alienation and the value of the work done.

1003. The owner of lost or forgotten property may revendicate it, so long as it has not been prescribed, by offering to pay the cost

of its administration and, as the case may be, the value of the work done. The holder of the property may retain it until payment.

If the property has been alienated, the owner's right is exercised, where such is the case, only against the balance of the price of sale.

TITLE TWO

OWNERSHIP

CHAPTER I

NATURE AND EXTENT OF THE RIGHT OF OWNERSHIP

1004. Ownership is the right of a person to use, enjoy and dispose of property fully and freely subject to the limits and conditions determined by law.

Ownership may be in various forms and fragments.

1005. The ownership of property also gives a right of accession in what is united to or incorporated with the property, from the time of incorporation.

1006. The fruits and revenues of property belong to the owner, and he bears the costs of production.

1007. The owner of the property assumes the risks of loss and deterioration.

1008. Ownership of the soil carries with it ownership of what is above and what is below the surface, to the full height and depth expedient for the exercise of the right of ownership.

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

1009. No owner may be compelled to transfer his ownership except by expropriation according to law for public purposes and in consideration of a just and prior indemnity.

1010. The owner of property has a right to revendicate it against the possessor or the person having detention of it without right, and may object to any trespass or to any use which he has not authorized or that is not authorized by law.

CHAPTER II

ACCESSION

SECTION I

IMMOVABLE ACCESSION

1011. Accession of movable or immovable property to an immovable may be voluntary or involuntary. Accession is artificial in the first case, natural in the second.

§ 1.—*Artificial accession*

1012. Structures, plantations or works on or in an immovable are presumed to have been made by the owner of the immovable at his own expense and to belong to him.

1013. An owner of an immovable who erects structures or works or makes plantations with materials which do not belong to him acquires ownership of the materials by accession, but is required to pay their value at the time the materials used were incorporated.

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

1014. An owner of an immovable acquires ownership of the structures or works erected or plantations made on his immovable by a possessor, whether the improvements were necessary, useful or for amenities.

1015. The owner shall reimburse the possessor for the necessary improvements, even if the structures, works or plantations no longer exist.

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

1016. The owner shall reimburse for the useful improvements made by a possessor in good faith, if the structures, works or plantations still exist; he may also as he elects, pay him compensation equal to the increase in value.

The owner may, on the same conditions, reimburse for the expedient improvements made by the possessor in bad faith except the obligation to pay compensation, after deducting production costs, for fruits and revenues collected.

The owner may also compel the possessor in bad faith to remove the structures, works or plantations and to restore the premises to their former condition; if restoration to their former condition is impossible, the owner may keep them without compensation or compel the possessor to remove them.

1017. The owner may compel the possessor to acquire the immovable and to pay him its estimated value if the useful improvements made are costly and extensive in relation to its value.

1018. A possessor in good faith who has made improvements as amenities for himself may abandon or remove the structures, works or plantations he has made. If he abandons them and the owner manifests his intention to preserve them, he is entitled to their cost or the increase in value given to the immovable, whichever is less.

1019. The owner may compel the possessor in bad faith to remove the structures, works or plantations he has made as amenities for himself and to restore the premises to their former condition; if restoration to their former condition is impossible, he may keep them without compensation or compel the possessor to remove them.

1020. A possessor in good faith has a right to retain the immovable until he has been reimbursed for necessary or useful improvements.

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

1021. Improvements made by a person having detention are dealt with according to the rules prescribed for improvements made by a possessor in bad faith.

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

§ 2.—*Natural accession*

1022. Alluvion becomes the property of the riparian owner.

Alluvion is the deposits of earth and augmentations which are gradually and imperceptibly formed on riparian lands of a watercourse.

1023. Accretions left by the imperceptible recession of running water from one bank while it encroaches upon the opposite bank are acquired by the riparian owner on the bank gradually added to, and the riparian owner on the opposite bank has no claim for the land encroached upon.

No right exists under this article with regard to accretions from the sea, which form part of the public domain.

1024. If, by sudden force, a watercourse carries away a large and recognizable part of a riparian land to a lower land or to the opposite bank, the owner of the part carried away may reclaim it.

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

1025. An island formed in the bed of a watercourse belongs to the owner of the bed.

1026. If, in forming a new branch, a watercourse cuts a riparian land and thereby forms an island, the owner of the riparian land retains the ownership of the island so formed.

1027. If a watercourse abandons its bed and forms a new bed, the former bed belongs to the owners of the newly occupied land, each in proportion to the land which he has lost.

SECTION II

MOVABLE ACCESSION

1028. Where movables belonging to several owners have been intermingled or united in such a way as to no longer be separable without deterioration or without excessive labour and cost, the new property belongs to the owner having contributed most to its creation by the value of the original property or by his work.

1029. A person having worked on or processed material which does not belong to him acquires ownership of the new property if the work or processing is worth more than the material used.

1030. The owner of a new property shall pay the value of the material or labour to the person having supplied it.

If it is impossible to determine who contributed most to the creation of the new property, the interested persons are its undivided co-owners.

1031. A person obliged to return a new property may retain it until its owner pays him the compensation he owes him.

1032. In unforeseen circumstances, any right of accession in respect of movable property is entirely subordinate to the principles of equity.

CHAPTER III

SPECIAL RULES ON OWNERSHIP OF IMMOVABLES

SECTION I

LIMITS AND BOUNDARIES OF LAND

1033. The limits of land are determined by the titles, the cadastral documents, and the boundary lines of the land, as well as by any other useful indication or document, if need be.

1034. Every owner may compel his neighbour to have the boundaries between their contiguous land determined in order to set displaced or missing boundary markers back in place, to verify ancient boundary markers or to rectify the dividing line between their properties.

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

The minutes of the determination of the boundaries shall be registered by deposit.

SECTION II

WATERS

1035. Lower land is subject to receiving water flowing onto it naturally from higher land.

The owner of lower land has no right to erect works to prevent the natural flow. The owner of higher land has no right to aggravate the condition of lower land, and is not presumed to do so if he makes works to facilitate the natural run off or, where his is devoted to agriculture, he executes drainage works on his land.

1036. An owner who has a spring on his land may use it and dispose of it.

He may for his needs use water from the lakes and ponds that are entirely on his land.

1037. A riparian owner may, for his needs, make use of a lake, the headwaters of a watercourse or any other watercourse bordering or crossing his land. As the water leaves his land, he shall direct it, not excessively changed in quality or quantity, into its regular course.

No riparian owner may by his use of the water prevent other riparian owners from exercising the same right.

1038. A person having a right to use a spring, lake, sheet of water, subterranean stream or any running water may, to prevent the water from being polluted or dried up, require the destruction or equipping of any works that is polluting or drying up the water.

1039. Roofs are required to be built in such a manner that water, snow and ice fall on the owner's land.

SECTION III

TREES

1040. Fruit that falls from a tree onto neighbouring land belongs to the owner of the tree.

1041. If branches or roots extend over or upon an owner's land from the neighbouring land and obstruct its use, the owner may request his neighbour to cut them and, if he refuses, cut them himself at the expense of the owner of the tree.

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

1042. The owner of land used for agricultural operations may compel his neighbour to fell the trees along and not over five metres from the dividing line, if they are injurious to his operations, except those in an orchard or sugar bush.

SECTION IV

ACCESS TO AND PROTECTION OF ANOTHER'S LAND

1043. Every owner of land, if previously notified, shall allow his neighbour access to it if that is necessary in order to build, repair or maintain a structure, works or plantation on the neighbouring land.

1044. Where property is carried or strays onto the land of another by the effect of a force of nature or a fortuitous event, the owner of the land shall allow the property to be searched for and removed, unless he immediately searches for it himself and returns it.

The property, whether object or animal, does not cease to belong to its owner unless he abandons the search, in which case it is acquired

by the owner of the land unless he compels the owner of the property to remove it and to restore his land to its former condition.

1045. An owner obliged to give access to his land is entitled to compensation for the damage he incurs or to the restoration of his land to its former condition.

1046. The owner of land shall do such repair or demolition work as is needed to prevent the collapse of a structure or work situated on his land that is in danger of falling onto the neighbouring land, including a public road.

1047. Where the owner of land erects a structure or works or makes a plantation on or in his land, he shall not disturb the neighbouring land or undermine the structures, works or plantations situated on it.

1048. Where an owner has, in good faith, built beyond the limits of his land on a parcel of land belonging to another, he shall, at the choice of the owner of the land he has encroached upon elects, acquire the parcel by paying him the actual value, or pay him compensation for the temporary loss of use of the parcel.

If the encroachment is a considerable one, causes serious damage or is made in bad faith, the owner of the land encroached upon may compel the builder to acquire his immovable and to pay him its estimated value, or to remove the structures and to restore the premises to their former condition.

1049. Neighbours shall put up with the normal neighbourhood annoyances that are not beyond the limit of tolerance they owe each other, according to the nature or location of their land or local custom.

SECTION V

VIEW

1050. No person may have a direct view, balcony or other projection less than one hundred and fifty centimetres from the dividing line.

This rule does not apply in the case of

(1) views on the public thoroughfare, steps for entering or leaving a building, or windows or doors with frosted glass;

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

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

1051. The distance of one hundred and fifty centimetres is measured from the exterior facing of the wall where the opening is made and perpendicularly therefrom to the dividing line.

1052. A person may make translucent lights in a wall that is not a common wall, even if it is immediately adjacent to the dividing line.

1053. A co-owner of a dividing wall has no right to make any opening in it.

SECTION VI

RIGHT OF WAY

1054. The owner of land enclosed by that of others in such a way that it has no access or only an inadequate, difficult or impassable access to the public road may, if all his neighbours refuse to grant him a servitude or another mode of access, require one of them to provide him the necessary right of way to use and operate his land.

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

1055. Right of way is claimed from the owner whose land affords the most natural way out, taking into consideration the condition of the premises, the benefit to the enclosed land, and the inconvenience caused to the servient land by the right of way.

1056. If land is enclosed as a result of the division of land pursuant to a partition, will or contract, right of way may be claimed only from a coparcener, heir or contracting party, not from the owner offering the shortest way, but in this case the way is provided without compensation.

1057. The beneficiary of a right of way shall build and maintain all the works necessary to ensure that his right is exercised under conditions that cause the least possible damage to the servient land.

1058. Right of way is extinguished when it ceases to be necessary for the use and operation of the land. The compensation is not reimbursed, but if it was payable as an annual rent or by instalments, future payments of these are no longer due.

SECTION VII

FENCES AND COMMON DIVIDING FENCES

1059. Any owner of land may fence it, at his own expense, with walls, ditches, hedges or any other kind of fence.

He may also require his neighbour to erect one-half of or share the cost of erecting a common dividing fence between his land and his neighbour's land.

1060. A fence on the dividing line is presumed to be common. Similarly, a wall supporting buildings on either side is presumed to be common up to the point of disjunction.

1061. An owner erecting a supporting wall of a building along the dividing line of his land shall erect it on his own land only, although footings may encroach, subject to prior payment of compensation to the owner of the land encroached upon.

1062. Any owner may cause a private wall that is immediately adjacent to the dividing line to be rendered common by reimbursing the owner of the wall for one-half of the value of the section rendered common and, where such is the case, one-half of the value of the ground used.

1063. Each owner may build against a common wall and set beams and joists against it. He shall obtain the concurrence of the other owner on how to proceed.

In case of disagreement, the owner may apply to the court to determine the necessary means to avoid infringement of the other's rights by the new structure.

1064. The maintenance, repair and rebuilding of a common wall are the responsibility of each owner in proportion to his right.

An owner who does not use the common wall may abandon his right and be relieved of his obligation to share the responsibilities by registering a notice to that effect, by deposit, and transmitting copy of it to the other owners without delay. The notice entails the transfer of his portion of the ground the wall is built on.

1065. A co-owner of a common wall has a right to heighten it at his own expense after ensuring himself by an expertise that it can withstand it, and shall pay one-sixth of the cost of the heightening to the other as compensation.

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

1066. The heightened part of the wall belongs to the person who made it, and the cost of its maintenance, repair and rebuilding is his responsibility.

The neighbour who did not contribute to the heightening may nevertheless acquire common ownership of it by paying one-half of the cost of the heightening or rebuilding and, where such is the case, one-half of the actual value of the ground provided for excess thickness. He shall also repay any compensation he has received.

TITLE THREE

SPECIAL MODES OF OWNERSHIP

CHAPTER I

GENERAL PROVISIONS

1067. Ownership has two principal special modes, co-ownership and superficies ownership.

1068. Co-ownership is called undivided where several persons jointly have a right of ownership in a property while the property is not physically partitioned among them.

Co-ownership is called divided where, while certain parts of the property are physically divided, the right of ownership is apportioned among the co-owners in fractions, each comprising an exclusive part of the property and an undivided share of the common parts.

CHAPTER II

UNDIVIDED CO-OWNERSHIP

SECTION I

ESTABLISHMENT OF INDIVISION

1069. Indivision may arise from a contract, succession or judgment or by operation of law.

1070. An indivision agreement that postpones partition of a property shall be set down in writing, describing the property and indicating the parts belonging to each undivided owner.

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

1071. Conventional indivision regarding an immovable may be set up against third persons only if it is registered by deposit. It may be set up against the assigns of the undivided owners from the time it is registered.

SECTION II

RIGHTS AND OBLIGATIONS OF UNDIVIDED CO-OWNERS

1072. The shares of undivided co-owners are presumed equal.

Each undivided co-owner has the rights and obligations of an exclusive owner as regards his share. Thus, each may alienate or hypothecate his share or otherwise offer it as security, and his creditors may seize it.

1073. Each undivided co-owner may make use of the undivided property provided he does not affect its destination or the rights of the other co-owners.

If one of the co-owners uses and enjoys the property privately is liable for compensation.

1074. The fruits and revenues of the undivided property accrue to the indivision. Each undivided co-owner is entitled to his share each year, but any share unclaimed for three years from its due date accrues to the indivision.

1075. The undivided co-owners are liable proportionately to their shares for the costs of administration and the other common charges related to the undivided property.

1076. Each undivided co-owner is entitled to be reimbursed for necessary improvements he has made to conserve the undivided property. For other improvements, he is entitled, at partition, to compensation equal to the increase in value given to the property.

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

1077. Each undivided co-owner has a right of accession to property joined or incorporated with the part of the undivided property of which he has private use and enjoyment. If none of the undivided co-owners so uses or enjoys a part of the property, the right of accession operates to the benefit of all the co-owners proportionately to their shares in the indivision.

1078. In case of an indivision agreement, partition is not a sufficient cause to set up against a creditor holding a hypothec or other security on an undivided part of the property, unless he has consented to the partition.

1079. Any undivided co-owner, within sixty days of learning that a third person has acquired the share of an undivided co-owner, may exclude him from the indivision by reimbursing him for the transfer price and the expenses he has paid.

1080. An undivided co-owner having registered a notice of address may, within sixty days of being notified of the intention of a creditor to sell the share of an undivided co-owner or to retake it in payment of an obligation, be subrogated to the rights of the creditor by paying him the debt of the undivided co-owner, with costs.

An undivided co-owner not having registered a notice of address has no right of redemption against a creditor or the assigns of the creditor.

1081. If several undivided co-owners exercise their right of redemption or subrogation in the share of an undivided co-owner, it is partitioned among them proportionately to their interest in the undivided property.

SECTION III

ADMINISTRATION OF UNDIVIDED PROPERTY

1082. Undivided co-owners of property administer it jointly.

1083. Administrative decisions are taken by a majority in number and shares of the undivided co-owners.

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

1084. The undivided co-owners may appoint one of their number or another person as manager and entrust him with the administration of the undivided property.

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

1085. Where one of the undivided co-owners administers the undivided property with the knowledge of the others and without objection on their part, he is presumed to have been appointed manager.

1086. The manager of undivided property shall act alone in its regard as the administrator of another person's property charged with simple administration.

SECTION IV

END OF INDIVISION AND PARTITION

1087. No one is bound to remain in indivision; partition may be demanded at any time unless it has been postponed by express agreement, a testamentary disposition, a judgment, or operation of law, or unless it is impossible because the property has been appropriated for a durable purpose.

Notwithstanding any agreement to the contrary, a majority of three-quarters in shares of the undivided co-owners may terminate the undivided co-ownership of a mainly residential immovable in order to establish divided co-ownership of it.

1088. On a motion by an undivided co-owner, the court, to avoid a loss, may postpone the partition of the whole or part of the property and continue the indivision for not over two years.

A decision under the first paragraph may be revised if the causes shown for continuing the indivision have ceased to exist or if the indivision has become intolerable or dangerous for the undivided co-owners.

1089. If one of the undivided co-owners objects to continuing in indivision, the others may satisfy him at any time by apportioning his share to him in kind, provided it is easily detachable from the rest of the undivided property, or in money, as he chooses.

If the share is apportioned in kind, the undivided co-owners may make the allotment least prejudicial to the exercise of their rights.

If the share is apportioned in money, the share of each undivided co-owner is increased in proportion to its payment.

1090. Creditors who had a right of action against the undivided property before it became undivided and creditors whose claim arises from its administration are paid out of the assets before partition. They may, in addition, seize and sell the undivided property.

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

1091. Indivision may be terminated by decision of a majority in number and shares of the undivided co-owners where a large part of the undivided property is lost or expropriated.

1092. Indivision ends by the partition in kind or alienation of the property.

In the case of partition, the provisions relating to the partition of successions apply, adapted as required.

CHAPTER III

DIVIDED CO-OWNERSHIP OF IMMOVABLES

SECTION I

ESTABLISHMENT OF DIVIDED CO-OWNERSHIP

1093. Divided co-ownership of an immovable is established by registration of a declaration under which ownership of the immovable is divided into fractions belonging to one or several persons.

1094. The co-owners as a body constitute a legal person, the objects of which are to preserve the immovable, to maintain and manage the common parts, to protect the rights attaching to the immovable or the co-ownership and to take all measures of common interest.

The legal person shall be called a syndicate and be registered in the registry of associations and enterprises.

1095. Divided co-ownership may be established of an immovable that is the object of an emphyteutic lease or superficies right if the unexpired term of the lease or right, at the time of registration of the declaration, is over fifty years.

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

SECTION II

FRACTIONS OF CO-OWNERSHIP

1096. The relative value of each of the fractions of a divided co-ownership with reference to the value of all the fractions together is determined in consideration of the nature, destination, dimensions and location of the exclusive part of each fraction, but not of its use.

The relative value is determined in the declaration.

1097. Those parts of the buildings and land that are the property of a specific co-owner and that are for his use alone are exclusive.

1098. Those parts of the buildings and land that are for the use of all the co-owners are common.

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

1099. The following are deemed to be common parts: the ground, yards, verandas or balconies, parks and gardens, access ways, stairways and elevators, passageways and halls, common service areas, parking and storage areas, foundations and main walls of buildings, and common equipment and apparatus, such as the central heating and air-conditioning systems and the piping and wiring, including what crosses exclusive parts.

1100. Partitions or walls that are not part of the foundations and main walls of a building but which separate an exclusive part from a common part or from another exclusive part are presumed common.

1101. Each co-owner has an undivided right of ownership in the common parts. His share of the common parts is proportionate to the relative value of his fraction.

1102. Each fraction constitutes a distinct entity and may be alienated in whole or in part; the alienation includes, in each case, the share of the common parts appurtenant to the fraction or the part of

the fraction alienated, as well as the right to use the common parts for restricted use, if any.

1103. The shares of a fraction in the common parts is not susceptible, separately from the exclusive part of the fraction, of alienation, an action in partition or forced licitation.

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

1104. Alienation of a divided part of a fraction is void and not registrable unless the declaration of co-ownership and the cadastral documents have been priorly altered so as to create a new fraction, describe it, give it a separate cadastral number and determine its relative value.

1105. Each fraction forms a distinct entity for the purposes of real estate assessment and taxation.

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

1106. Notwithstanding articles 1983 and 2017 of the Civil Code of Lower Canada, a hypothec, additional security accessory thereto of privilege existing on the whole of an immovable held in co-ownership is divided among the fractions according to the relative value of each.

SECTION III

DECLARATION OF CO-OWNERSHIP

§ 1.—*Content of the declaration*

1107. A declaration of co-ownership comprises the co-ownership deed, the by-laws of the immovable and a description of the fractions.

1108. A co-ownership deed shall define the destination of the immovable, of the exclusive parts and of the common parts.

The deed shall also determine the relative value of each fraction, indicating how that value was determined, the share of the expenses and the number of votes allocated to each fraction, the rules on adopting and amending the by-laws of the immovable and any other agreement regarding the immovable or its exclusive or common parts. It shall also specify the powers and duties of the board of directors of the syndicate and of the general meeting of the co-owners.

1109. The by-laws of an immovable shall contain the rules on the enjoyment, use and upkeep of the exclusive and common parts, and those on the operation and administration of the co-ownership.

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

1110. A description shall contain the cadastral description of the exclusive parts and common parts of the immovable and the plans of the immovable showing all the land and buildings, the shape and dimensions of all the exclusive and common parts and their location in the immovable.

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

The plans shall bear a certificate of a land-surveyor attesting that the buildings have been constructed according to the plan, and the date when the measurements were taken.

1111. No declaration of co-ownership may impose any restriction on the rights of the co-owners except restrictions justified by the destination, characteristics or location of the immovable.

Stipulations prohibiting the alienation of a divided part of a fraction or making the execution of works that may have an impact on the common parts subject to approval by the syndicate are authorized if they are justified according to the first paragraph.

1112. A declaration of co-ownership may be set up against the assigns of the co-owners from the time of its registration.

1113. The by-laws of the immovable may be set up against the lessee or occupant of a fraction upon his being given a copy by the co-owner or, failing him, by the syndicate.

1114. Unless express provision is made therefor in the declaration of co-ownership, no fraction may be held by several persons each having a right of enjoyment, periodically and successively, in the fraction, nor may a fraction be alienated for that purpose.

Where the declaration makes provision for periodical and successive possession by holders, it shall indicate the number of fractions that may be held in this way, the occupancy periods, the maximum number of persons who may hold these fractions, and the rights and obligations of these occupants.

§ 2.—*Registration of the declaration*

1115. A declaration of co-ownership, and any amendments, shall be in the form of a notarial deed *en minute*.

The declaration and any amendments shall be registered by deposit. The declaration shall be entered in the index of immovables and noted opposite the common and exclusive parts; amendments shall also be entered, but shall be noted only opposite the common parts, unless they directly affect an exclusive part.

1116. The registry of a deed against an exclusive part is valid against the share of the common parts attached to it, without any requirement to register the deed against the common parts.

1117. No deed of co-ownership may be set up against the owners of an immovable, the emphyteutic lessee or the holder of the right of superficies, as the case may be, or the holders of privileges or hypothecs registered against it unless, at the time of registration, it is signed by all the owners and the emphyteutic lessee or the holder of the right of superficies and is accompanied with the written consent of all the holders of privileges, hypothecs or other security on the immovable.

SECTION IV

RIGHTS AND OBLIGATIONS OF CO-OWNERS

1118. Each co-owner has the disposal of his fraction; he has free use and enjoyment of his exclusive part and of the common parts provided he observes the by-laws of the immovable and does not impair the rights of the other co-owners or the destination of the immovable.

1119. Each of the co-owners shall contribute in proportion to the relative value of his fraction to the expenses arising from the co-ownership and from the operation of the immovable and the contingency fund, although only the co-owners who use common parts for restricted use only shall contribute to the costs resulting from those parts.

1120. A co-owner who gives a lease on his fraction shall notify the syndicate and give the lessee's name.

1121. No co-owner may interfere with the execution, even inside his exclusive part, of work required for the conservation of the immovable decided upon by the syndicate, or of urgent work.

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

1122. A co-owner who suffers prejudice by the execution of work, because of a permanent diminution in the value of his fraction, a serious disturbance, although temporary, of enjoyment, or deterioration is entitled to compensation from the syndicate if the syndicate ordered the work or, if it did not, from the co-owners who did the work.

1123. A co-owner, within five years from the day of registration of the declaration of co-ownership, may make an application to the court for a revision, for the future, of the apportionment of the common expenses and of the relative value of the fractions if the apportionment is unjust and does not conform to the criteria for determining the relative value of the fractions.

SECTION V

RIGHTS AND OBLIGATIONS OF THE SYNDICATE

1124. The syndicate shall keep a register at the disposal of the co-owners containing the name and address of each co-owner and each lessee, the minutes of the meetings of the co-owners and of the board of directors and the financial statements.

It shall also keep at their disposal the declaration of co-ownership, the copies of the contracts to which it is a party, the plans and specifications of any immovable constructed, and all other documents regarding the immovable and the syndicate.

1125. The syndicate shall, according to the estimated cost of major repairs and the replacement of common parts, establish a contingency fund to provide cash funds on a short-term basis allocated exclusively to such repairs and replacement. The syndicate is the owner of the fund.

1126. Each year, the board of directors, after consultation with the general meeting of the co-owners, shall determine their contribution to the contingency fund, taking into account, where applicable, the rights of any co-owner in the common parts for restricted use.

The board shall similarly fix the contribution for common expenses, after determining the amount of the sums required to meet the expenses arising from the co-ownership and the operation of the immovable.

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

1127. The syndicate has an insurable interest in the whole immovable, including the exclusive parts. It shall take out insurance against ordinary risks, such as fire and theft, on the whole of the immovable except improvements made by a co-owner to his part. The

amount of the insurance shall be equal to the replacement cost of the immovable.

The syndicate shall also take out third person liability insurance.

1128. Non-observance of a condition of the insurance contract by a co-owner is not a sufficient cause to set up against the syndicate.

1129. The indemnity owing to the syndicate following a loss is, notwithstanding article 2586 of the Civil Code of Lower Canada, paid to the trustee appointed in the co-ownership deed or, failing that, designated by the syndicate.

The indemnity shall be used to repair or rebuild the immovable, unless the syndicate decides to terminate the co-ownership, in which case the trustee, after determining the share of each of the co-owners according to the relative value of his fraction, shall, out of that share, pay the hypothecary and preferred creditors according to the rules in article 2586; he shall remit the balance of the indemnity to the liquidator of the syndicate with his report.

1130. The syndicate, with authorization, may acquire or alienate fractions, common parts or other real rights.

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

1131. The syndicate is responsible for damage caused to the co-owners or third persons by structural defects or lack of maintenance of the common parts, subject to any right of appeal.

1132. A judgment condemning the syndicate to pay a sum of money is executory against the syndicate and against each of the persons who were co-owners at the time when the cause of action arose, proportionately to the relative value of his fraction.

The judgment shall not be executed against the contingency fund, except for a debt arising from the repair of the immovable or the replacement of common parts.

1133. The syndicate may demand the resiliation of the lease of a fraction, after notifying the lessee, where the inexecution of an obligation by the lessee causes serious prejudice to a co-owner or to another occupant of the immovable.

1134. Where the refusal of a co-owner to comply with the declaration of co-ownership causes serious and irreparable prejudice to the syndicate or one of the co-owners, either of them may apply to the court for an injunction to the co-owner to comply with the declaration.

If the co-owner violates the injunction or refuses to obey it, the court may, in addition to any other penalty, order the co-owner's fraction sold at public auction, after fixing the upset price. The sale is made in accordance with the Code of Civil Procedure.

1135. The syndicate has a legal hypothec on the fraction of a co-owner whose payment of his share of the common expenses or of his contribution to the contingency fund is more than sixty days overdue.

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

The syndicate, through its board of directors, may grant remission of the legal hypothec.

1136. The syndicate may institute any action on the grounds of hidden faults, faults of construction or faults in the ground affecting the immovable. In a case where the faults affect the exclusive parts, the syndicate shall, however, obtain the authorization of the co-owners of those parts.

Where the defendant sets up the failure to act with reasonable diligence against an action grounded on hidden faults, such diligence is appraised in respect of the syndicate or of a co-owner from the day of the election of a new board of directors, after the transfer of control of the syndicate by the promoter.

1137. The syndicate within six months of learning that a person has acquired the rights of the owner or the owner of the soil and subsoil of an immovable that is subject to an emphyteutic lease or to ownership of superficies and in which divided co-ownership has been established may acquire the rights of that person by reimbursing him for the price of transfer and the costs he has paid.

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

1138. The syndicate may join an association of co-ownership syndicates formed for the creation, administration and upkeep of

common services for several immovables held in co-ownership, or for the pursuit of common interests.

SECTION VI

THE DIRECTORS OF THE SYNDICATE

1139. The composition of the board of directors of the syndicate, the mode of appointment, replacement and remuneration of the directors and the other conditions of office of the directors are fixed by by-law of the immovable.

The court, on the motion of a co-owner, may appoint or replace a director and fix his conditions of office if there is no provision therefor in the by-laws or if it is impossible to proceed in the prescribed manner.

1140. The day-to-day administration of the syndicate may be entrusted to a manager chosen or not among the co-owners.

The manager shall act as the administrator of the property of others charged with simple administration.

1141. A director or the manager may be removed by the syndicate if, being a co-owner, he neglects to pay his contribution to the common expenses or to the contingency fund.

SECTION VII

THE GENERAL MEETING OF THE CO-OWNERS

1142. The notice calling the annual general meeting of the co-owners shall be accompanied, in addition to the balance-sheet, with the statement of the results for the preceding financial year, the statement of debts and claims, the budget forecast, any draft amendment to the declaration of co-ownership and a note on the general terms and conditions of any proposed contract or planned work.

1143. Within five days of receiving notice of a general meeting of the co-owners, any co-owner may request the placing of a question on the agenda.

The board shall give written notice to the co-owners before the meeting of the questions on the agenda.

1144. Co-owners holding a majority of the votes constitute a quorum at general meetings.

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

1145. Each co-owner is entitled to a number of votes at a general meeting proportionate to the relative value of his fraction. The undivided co-owners of a fraction shall vote in proportion to their undivided shares.

Nothwithstanding the foregoing, no co-owner is entitled to over ten per cent of all the votes of the co-owners in addition to the votes attached to the fraction in which he resides. This rule does not apply to a person who has become a co-owner as a result of realizing a security.

1146. No promoter of a co-ownership is entitled to over sixty per cent of all the votes of the co-owners at the end of the first year after the date of registration of the declaration of co-ownership.

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

1147. A person who at the time of registration of a declaration of co-ownership is the owner of at least one-half of all the fractions or his successors, other than a person who in good faith acquires a fraction for a price equal to its market value, is deemed to be a promoter.

1148. Where a co-owner defaults payment of his share of the common expenses or his contribution to the contingency fund, the syndicate may obtain a court order depriving him of voting rights.

1149. Where the number of votes available to a co-owner or a promoter is reduced by the effect of this section, the total number of votes that may be cast to decide a question is reduced by same number.

1150. No assignment of the voting rights of a co-owner which has not been notified in writing to the syndicate may be set up against it.

1151. Decisions of the syndicate, including a decision to correct a clerical error in the declaration of co-ownership, are taken by a majority of the co-owners present or represented at the meeting.

1152. Decisions respecting the following matters require a majority vote of the co-owners representing three-quarters of the voting rights of all the co-owners:

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

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

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

1153. Decisions of the following nature require a majority vote of the co-owners representing ninety per cent of the voting rights of all the co-owners:

(1) to change the destination of the immovable;

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

(3) to authorize the construction of buildings for the creation of new fractions;

(4) to amend the declaration of co-ownership in order to permit the holding of a fraction by several persons having a right of periodical and successive enjoyment.

1154. The co-owners of adjacent exclusive parts may alter the boundaries between their exclusive parts without obtaining the approval of the general meeting provided they obtain the consent of their hypothecary or preferred creditors and of the syndicate, given by the board of directors. No alteration may decrease the relative value of the group of exclusive parts altered or the total of the voting rights attached to them.

The syndicate, through its board of directors, shall amend the declaration of co-ownership at the expense of the co-owners contemplated in the first paragraph; the deed of amendment shall be accompanied with the consent of the creditors, the co-owners and the syndicate.

1155. Any stipulation of the declaration of co-ownership which changes the number of votes required in this chapter for taking any decision is deemed void.

1156. Any decision of the syndicate which, contrary to the declaration of co-ownership, imposes on a co-owner a change in the relative value of his fraction, a change of destination of his exclusive part or a change in the use he may make of it is void.

1157. Any co-owner may apply to the court to nullify a decision of the general meeting if the decision is partial, if it was taken with intent to injure or in contempt of the rights of the co-owners.

The right of action is forfeited unless instituted within thirty days after the meeting.

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

SECTION VIII

TRANSFER OF CONTROL OF THE SYNDICATE

1158. Within the ninety day period from the day on which the promoter of a co-ownership ceases to hold a majority of voting rights in the general meeting of the co-owners, the board of directors shall call a special meeting of the co-owners to elect a new board of directors.

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

1159. The promoter shall render account of his administration at the special meeting.

He shall produce the financial statements, which shall be prepared by an accountant who is a member of a professional corporation of accountants and be accompanied with remarks, if any, on the financial situation of the syndicate. The accountant, in his report to the co-owners, shall indicate any irregularity that has come to his attention.

1160. The accountant has a right of access at all times to the books, accounts and vouchers concerning the co-ownership.

He may require the promoter or an administrator to give him any information or explanation necessary for the performance of his duties.

1161. The new board of directors may, within sixty days of the election, terminate, without penalty, maintenance or other service contracts entered into by the promoter, if they are prejudicial to the syndicate.

SECTION IX

TERMINATION OF CO-OWNERSHIP

1162. Co-ownership of an immovable may be terminated by a decision of a two-thirds majority of the co-owners representing ninety per cent of the votes of all the co-owners.

The decision to terminate the co-ownership shall be attested in a writing signed by the syndicate and the persons holding privileges or hypothecs on the immovable or part thereof, and by the emphyteutic lessee or the superficies owner, where such is the case. The notice shall be registered by deposit, entered in the index of immovables and filed in the registry of associations and enterprises.

1163. The syndicate is liquidated according to the rules on liquidation of legal persons.

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

CHAPTER IV

SUPERFICIES OWNERSHIP

SECTION I

NATURE OF SUPERFICIES OWNERSHIP

1164. Superficies ownership is a real immovable right which enables a person, called the superficiary, to be the owner of structures, works or plantations situated in or on an immovable belonging to another person, called the owner of the subsoil.

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

1165. A right of superficies ownership may be set up against third persons only if it has been registered by deposit.

1166. The right of the superficiary to use the subsoil is governed by an agreement. Failing agreement, the subsoil is encumbered by the servitudes necessary for the exercise of the right. These servitudes are extinguished on the termination of the right.

1167. The superficiary and the owner of the subsoil each bear the charges encumbering what constitutes the object of his right of ownership.

1168. Superficies ownership established by way of a construction lease enables the lessee, with the permission of the lessor, to erect structures, works or plantations and have himself recognized as owner.

The superficiary may transfer or sub-let his rights under the lease. He may also, acting alone, encumber the leased immovable with expedient servitudes, even in favour of third persons. These servitudes are extinguished on the termination of the right.

1169. Superficies ownership may be perpetual; that determined by a construction lease shall not exceed one hundred years, even if the lease stipulates a longer term.

A construction lease is not susceptible of tacit renewal beyond one hundred years.

SECTION II

TERMINATION OF SUPERFICIES OWNERSHIP

1170. Superficies ownership is terminated by expropriation of the whole of the soil and subsoil and of the structures, works or plantations erected or made thereon.

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

1171. Superficies ownership is also terminated

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

(2) by the fulfilment of a resolutive condition;

(3) by the expiration of the term, if any.

1172. At the termination of superficies ownership, the subsoil owner acquires ownership of the structures, works or plantations by paying their value to the superficiary, if they are of smaller value than the subsoil.

It the structures, works or plantations are equal in value to the subsoil or of greater value, the superficiary has a right to acquire ownership of the subsoil by paying its value to the subsoil owner, unless he prefers, at his own expense, to remove the structures, works and plantations he has erected or made and return the subsoil to its former condition.

1173. Where the superficiary fails to exercise his right to acquire ownership of the subsoil within ninety days following the end of the superficies ownership, the owner of the subsoil becomes owner by accession of the structures, works and plantations.

TITLE FOUR

DISMEMBERMENTS OF THE RIGHT OF OWNERSHIP

GENERAL PROVISION

1174. Usufruct, use, servitude and emphyteusis are dismemberments of the right of ownership and are real rights.

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

CHAPTER I

USUFRUCT

SECTION I

NATURE OF USUFRUCT

1175. Usufruct is the right of use and enjoyment, for a certain time, of property owned by another as one's own, subject to the obligation of preserving its substance and maintaining its destination.

1176. Usufruct is established by contract, by will or by law; it may also be established by judgment in the cases prescribed by law.

1177. Usufruct may be established for the benefit of one or several beneficiaries jointly or successively.

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

1178. No usufruct may last longer than one hundred years even if the deed granting it stipulates a longer term.

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

SECTION II

RIGHTS OF THE USUFRUCTUARY

§ 1.—*Scope of his right*

1179. The usufructuary has the use and enjoyment of the property subject to usufruct; he takes the property in the condition in which he finds it.

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

1180. The usufructuary may require the bare owner to cease any act which prevents him from fully exercising his right.

The bare owner's alienation of his right does not affect the right of the usufructuary.

1181. The usufructuary is the owner of the fruits and revenues produced by the property.

1182. The usufructuary is the owner of all the property subject to his usufruct which cannot be used without being consumed, subject to the obligation of returning similar property in the same quantity and of the same quality at the end of the usufruct.

Where the usufructuary is unable to return similar property he shall pay the value thereof in cash.

1183. The usufructuary may dispose, as a reasonable and prudent administrator, of property which, though not consumable, rapidly deteriorates with use.

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

1184. The usufructuary is entitled to the natural fruits attached to the property at the beginning of the usufruct. The usufructuary has no right to the fruits still attached to the property at the time his usufruct ceases.

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

1185. Revenues are counted, between the usufructuary and the bare owner, day by day. They belong to the usufructuary from the day his right begins to the day it terminates, regardless of when they are exigible or paid, except dividends, which belong to the usufructuary only if they are declared during the usufruct.

1186. Extraordinary profits and payments which may derive from the property under usufruct, such as premiums allotted for the redemption of securities, are paid to the usufructuary, who is accountable for them to the bare owner at the end of the usufruct.

1187. If a debt subject to the usufruct becomes payable during the usufruct, the price is paid to the usufructuary, who shall give discharge for it.

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

1188. The right to increase the capital subject to the usufruct, such as the right to subscribe by preference for shares, belongs to the bare owner, but the right of the usufructuary extends to the increase.

Where the bare owner elects to alienate his right, the proceeds of the alienation are remitted to the usufructuary, who is accountable for it at the end of the usufruct.

1189. So far as rights and obligations between the bare owner and the usufructuary are concerned, voting rights attached to shares or other securities, stocks or any fraction thereof or any other property belong to the usufructuary.

Notwithstanding the foregoing, any vote having the effect of altering the substance of the principal property, such as the capital stock or property held in co-ownership, or of changing the destination of the property or terminating the legal person, group or business enterprise, belongs to the bare owner.

1190. The usufructuary may transfer his right or lease a property comprised in the usufruct.

1191. A creditor of the usufructuary may cause the rights of the usufructuary to be seized and sold, subject to the rights of the bare owner.

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

§ 2.—*Improvements*

1192. Necessary improvements made by the usufructuary are treated, in relation to the owner, as those made by a possessor in good faith. The same rule applies to useful improvements.

§ 3.—*Trees and minerals*

1193. In no case may the usufructuary fell trees growing on the land subject to the usufruct except for repairs, maintenance or exploitation of the land. He may, however, dispose of those which have fallen or died naturally.

The usufructuary shall replace the trees that have been destroyed, conformably to the usage of the place or to the custom of the owners. He shall replace orchard and sugar bush trees, unless most of them have been destroyed.

1194. The usufructuary may begin agricultural or sylvicultural operations if the land subject to the usufruct is suitable therefor.

Where the usufructuary begins or continues operations, he shall do so in such a manner as not to exhaust the soil or prevent the regrowth of the forest. He shall also, in the case of sylvicultural operations, before his operation begins, have his operating plan approved by the bare owner. If he fails to obtain such approval, he may have the plan approved by the court.

1195. No usufructuary may extract minerals from the land subject to the usufruct except for the repair and maintenance of the land.

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

SECTION III

OBLIGATIONS OF THE USUFRUCTUARY

§ 1.—*Inventory and security*

1196. Unless the owner of the property does so himself or exempts the usufructuary, the usufructuary, in the manner of an administrator of the property of others, shall cause an inventory of the property subject to his right to be drawn up at his own expense, and shall furnish a copy to the bare owner.

No exemption may be granted if the usufruct is successive.

1197. In no case may the usufructuary compel the owner to deliver the property to him until he has caused the inventory of the property to be drawn up.

1198. Except in the case of a vendor or donor who has reserved the usufruct, the usufructuary shall, within sixty days of the opening of the usufruct, take out liability insurance or furnish other security to the bare owner to guarantee execution of his obligations. The usufructuary shall furnish additional security if his obligations increase while the usufruct lasts.

The usufructuary is exempted from the obligations if he is unable to execute them or if the settlor so provides.

1199. If the usufructuary fails to furnish security within the allotted time, the bare owner may have the property sequestered.

The sequestrator, in the manner of an administrator of the property of others charged with simple administration, shall deposit the amounts included in the usufruct and the proceeds of the sale of perishable goods. He shall similarly deposit the amounts deriving from payment of the claims subject to the usufruct.

1200. The usufructuary's delay to cause an inventory of the property to be drawn up or to furnish security deprives him of his right to the fruits and revenues from the opening of the usufruct to the execution of his obligations.

1201. The usufructuary may apply to the court for leave to retain sequestered movables necessary for his use under no other condition than that he undertake to produce them at the end of the usufruct.

§ 2.—*Insurance and repairs*

1202. The usufructuary is required to insure the property against ordinary risks such as fire and theft and to pay the insurance premiums while the usufruct lasts. He is, however, exempted from that obligation where the insurance premium is too high in relation to the risks.

1203. In the case of a loss, the indemnity is paid to the usufructuary, who shall give discharge therefor to the insurer.

The usufructuary shall use the indemnity for the repair of the property, except in case of total loss, where he may have enjoyment of the indemnity.

1204. The usufructuary or the bare owner may take out insurance on his own account to secure his rights.

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

1205. Maintenance of the property is borne by the usufructuary. He is not required to make major repairs except where rendered necessary as the result of his act, particularly his failure to make maintenance repairs since the opening of the usufruct.

1206. Major repairs are those which affect a substantial part of the property and require extraordinary outlays, such as repairs relating to the beams and support walls, replacement of roofs, prop-walls, heating, electricity, plumbing or electronic systems, and, in respect of movables, motive parts or casing of the property.

1207. The usufructuary shall notify the bare owner that major repairs are necessary.

The bare owner is under no obligation to make the major repairs. If he makes them, the usufructuary shall put up with the resulting inconvenience. If he does not make them, the usufructuary may make them and be reimbursed for the cost at the end of the usufruct.

§ 3.—*Other charges*

1208. The usufructuary is responsible, in proportion to the duration of the usufruct, for ordinary charges affecting the property subject to his right and for the other charges that are ordinarily paid with the revenues.

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

1209. The usufructuary by particular title is not responsible for the payment of the debts of succession.

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

1210. The usufructuary by general title and the bare owner are responsible for the payment of the debts of the succession in proportion to their shares in the succession.

The bare owner is responsible for the capital and the usufructuary for the interest.

1211. The usufructuary by general title may pay the debts of the succession; the bare owner is accountable therefor to him at the end of the usufruct.

Where the usufructuary elects not to pay the debts of the succession, the bare owner may cause property subject to the right of the usufructuary up to the amount of the debts to be sold or pay the debts himself; in the latter case, the usufructuary shall, for the duration of the usufruct, pay interest to the bare owner on the amount paid.

1212. The usufructuary is responsible for any costs of any legal proceedings related to his right of usufruct.

Where proceedings relate to both the rights of the bare owner and those of the usufructuary, the rules governing payment of the debts of the succession between the usufructuary by general title and the bare owner apply unless the usufruct is terminated by the judgment, in which case the costs are divided equally between the usufructuary and the bare owner.

1213. If, during the usufruct, a third person encroaches on the property of the bare owner or otherwise infringes his rights, the usufructuary shall so notify the bare owner, failing which he is responsible for all damage which may result to the bare owner, as if he himself had committed waste.

1214. Neither the bare owner nor the usufructuary is required to replace anything that has fallen into decay.

A usufructuary exempted from insuring the property is not required to replace or pay the value of any property that perishes by fortuitous event.

1215. If a usufruct is established upon a herd or a flock and the entire herd or flock perishes by fortuitous event, the usufructuary exempted from insuring the property shall account to the owner for the skins or their value.

If the herd or flock does not perish entirely, the usufructuary shall replace those animals which have perished, up to the number of the increase.

SECTION IV

TERMINATION OF USUFRUCT

1216. Usufruct is terminated

(1) by the expiration of the term;

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

(3) by the union of the qualities of usufructuary and bare owner in the same person without prejudice to the rights of third persons;

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

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

1217. Usufruct is also terminated by the total loss of the property over which it is established, unless the property is insured.

In case of partial destruction of the property, the usufruct subsists upon the remainder.

1218. Usufruct does not terminate by expropriation of the property on which it is established. The indemnity is remitted to the usufructuary under the condition of his rendering account of it at the end of the usufruct.

1219. If a usufruct is granted until a third person reaches a certain age, it continues until the date he would have reached that age, even if he has died.

1220. A usufruct created for the benefit of several usufructuaries successively terminates with the death of the last surviving usufructuary or the dissolution of the last legal person.

In the case of a joint usufruct, the extinction of the usufruct in respect of one of the usufructuaries benefits the bare owner.

1221. At the end of the usufruct, the usufructuary shall return to the bare owner the property subject to the usufruct in the condition in which it is at that time.

The usufructuary is accountable for any loss or deterioration caused by his fault or not resulting from normal use of the property.

1222. A usufructuary who is guilty of misuse of enjoyment, who commits waste on the property, who allows it to depreciate or who in any manner endangers the rights of the bare owner, may be declared forfeited of his right.

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

The creditors of the usufructuary may intervene in the proceedings to ensure the preservation of their rights; they may offer to repair the waste and provide security for the future.

1223. A usufructuary may abandon his right, in whole or in part.

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

1224. Total renunciation may be set up against the bare owner from the day it is notified to him; partial renunciation may be set up from the date of judicial proceedings or of an agreement between the parties.

1225. A usufructuary having serious difficulty in fulfilling his obligations is entitled to require from the bare owner or joint or successive usufructuary that his right be converted into an annuity.

Failing an agreement between the parties, the court, if it confirms the right of the usufructuary, shall fix the annuity, taking into account, in particular, the scope and duration of the right and the fruits and revenues derived therefrom.

CHAPTER II

USE

1226. A right of use is the right to enjoy the property of another for a time and to take the fruits and revenues thereof but only to the extent of the needs of the user and, where such is the case, the persons living with him or his dependants.

1227. The right of use is unassignable and unseizable unless the agreement between the parties provides otherwise or the court authorizes it in the interest of the user after ascertaining that the owner incurs no prejudice thereby.

1228. A user whose right bears on part only of an immovable may make use of any facility intended for common use.

1229. A user who takes all the fruits and revenues of the property or occupies the entire immovable is fully responsible for the costs of production, maintenance repairs and for payment of the charges in the same manner as a usufructuary.

Where the user takes only part of the fruits and revenues or occupies only part of the immovable, he shall contribute in proportion to his use.

1230. The provisions governing usufruct, adapted as required, are, in all other respects, applicable to the right of use.

CHAPTER III

SERVITUDE

SECTION I

NATURE OF SERVITUDE

1231. A servitude is a charge imposed on an immovable, called the servient land, in favour of another immovable, called the dominant land, belonging to a different owner.

Under the charge the owner of the servient land is required to tolerate certain acts of use by the owner of the dominant land or himself abstain from exercising certain rights inherent in ownership.

A servitude extends to all that is necessary for its exercise.

1232. Servitudes are either continuous or discontinuous.

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

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

1233. Servitudes are either apparent or unapparent.

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

1234. A servitude is established by contract, by will, by destination of owner or by the effect of law.

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

1235. Servitudes are not affected by the transfer of ownership of the servient or dominant land.

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

1236. Servitude by destination of owner is evidenced by means of a writing made by the owner of the land who, in contemplation of its future parcelling, immediately establishes the charges that will be laid on one part of the land in favour of other parts.

It may also be evidenced in a writing by the owner of the servient land setting forth that the two landed properties now divided formerly belonged to a single owner and that he had established the material arrangements between them which constitutes the servitude.

SECTION II

EXERCISE OF THE SERVITUDE

1237. The owner of the dominant land may, at his own expense, take the measures or erect all the works necessary to exercise and preserve the servitude unless otherwise stipulated in the title establishing the servitude.

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

1238. The owner of the servient land, charged by the title with making the necessary works for the exercise and preservation of the servitude may free himself of the charge by relinguishing the entire servient land or any part of it sufficient for the exercise of the servitude to the owner of the dominant land.

1239. In no case may the owner of the dominant land make any change that would aggravate the situation of the servient land.

In no case may the owner of the servient land do anything that would tend to diminish the exercise of the servitude or to render it less convenient.

Notwithstanding the foregoing, the owner of the servient land may, at his own expense, provided he has an interest in doing so, transfer the site of the servitude to another place where its exercise will be no less convenient to the owner of the dominant land.

1240. If the dominant land is divided, the servitude remains due for each portion but the situation of the servient land shall not thereby be aggravated.

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

1241. Division of the servient land does not affect the rights of the owner of the dominant land.

1242. Except in the case of enclosed land, a servitude may be redeemed where its usefulness to the dominant land is out of proportion to the inconvenience or depreciation it entails for the servient land.

Failing agreement, the court, if it grants the right of redemption, shall fix the price, taking into account, in particular, the length of time for which the servitude has existed and the change of value entailed by the servitude both in favour of the servient land and to the detriment of the dominant land.

1243. The parties may exclude, in writing, the possibility of redeeming a servitude for a period not exceeding thirty years.

SECTION III

TERMINATION OF SERVITUDES

1244. A servitude is terminated

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

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

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

(4) by redemption;

(5) by non-user for thirty years.

1245. Prescription, as regards discontinuous servitudes, begins to run from the day the owner of the dominant land ceases to exercise the servitude and, as regards continuous servitudes, from the day any act contrary to their exercise is done.

1246. The mode of exercising a servitude may be prescribed just as the servitude itself, and in the same manner.

1247. Prescription runs even where the dominant land or the servient land undergoes a change of such a kind as to render exercise of the servitude impossible.

CHAPTER IV

EMPHYTEUSIS

SECTION I

NATURE OF EMPHYTEUSIS

1248. Emphyteusis is a right resulting from a contract by which a person acquires for a certain time the full enjoyment of an immovable owned by another provided he does not endanger its existence and undertakes to make buildings, works or plantations that increase or enhance its value.

1249. The term of the emphyteusis shall be stipulated in the contract and be for not less than ten nor more than one hundred years. If it is for a longer term, it shall be reduced to one hundred years.

1250. Emphyteusis established on an immovable that is under a declaration of co-ownership may, whatever its term, be renewed without the emphyteutic lessee's being required to erect buildings or works or make plantations to enhance the immovable or increase its value.

1251. The creditor of the emphyteutic lessee may cause the latter's rights to be seized and sold subject to the rights of the owner of the immovable.

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

SECTION II

RIGHTS AND OBLIGATIONS OF THE EMPHYTEUTIC LESSEE AND OF THE OWNER

1252. The emphyteutic lessee has all the rights of an owner over the immovable, subject to the restrictions contained in this chapter or in the contract of emphyteusis.

The contract may limit the rights of the parties, for instance by granting rights or guarantees to the owner for protecting the value of the property, ensuring its conservation, yield or use or otherwise preserving the rights of the owner or of the emphyteutic lessee or settling the execution of the contract.

1253. The emphyteutic lessee shall, at his own expense, and after convening the owner, cause a statement of the immovables subject to his right to be drawn up, unless the owner has exempted him therefrom.

1254. The emphyteutic lessee is responsible for a partial loss of the immovable; in no such case may he apply for the remission or reduction of the stipulated contract price, if any.

1255. The emphyteutic lessee is responsible for repairs, even major repairs, concerning the immovable or the buildings, works or plantations made or erected for the fulfilment of his obligation.

1256. An emphyteutic lessee who commits waste or fails to prevent the deterioration of the immovable or in any manner endangers the rights of the owner may be declared forfeited of his right.

The court, according to the gravity of the circumstances, may rescind the contract, with compensation payable immediately or by instalments to the owner, or without compensation, or it may require the emphyteutic lessee to furnish other security or impose any other additional obligations or conditions on him.

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

1257. The emphyteutic lessee is responsible for all real charges affecting the immovable.

1258. The owner has same obligations towards the emphyteutic lessee as a vendor.

1259. Where a price payable in a lump sum or by instalments is stipulated in the contract and the emphyteutic lessee fails to pay it for three years, the owner is entitled, after at least ninety days' notice, to resiliation of the contract.

SECTION III

TERMINATION OF EMPHYTEUSIS

1260. Emphyteusis is terminated

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

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

(3) by the resiliation of the contract;

(4) by the union of the qualities of owner and emphyteutic lessee in the same person, but without prejudice to the rights of third persons;

(5) by non-user for thirty years.

1261. Upon termination of the emphyteusis, the owner resumes possession of the immovable free of all the rights and charges granted by the emphyteutic lessee, unless the termination of the emphyteusis results from the cancellation by agreement of the contract.

1262. Upon termination of the emphyteusis, the emphyteutic lessee shall return the immovable in a good state of repair with the buildings, works or plantations stipulated in the contract, unless they have perished by fortuitous event.

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

1263. Unless the emphyteutic lessee has waived his right, emphyteusis may also be terminated by abandonment, which may take place only if the emphyteutic lessee has satisfied for the past all his obligations and leaves the immovable free of all charges.

TITLE FIVE

RESTRICTIONS ON THE FREE DISPOSITION OF CERTAIN PROPERTY

CHAPTER I

STIPULATIONS OF INALIENABILITY

1264. Any act by gratuitous title may restrict the exercise of the right to dispose of property. The stipulation shall be made in writing at the time of transfer of the property to a person who becomes the owner of the property or the holder of a dismemberment of the right of ownership in the property, or upon the transfer of the property to a trust.

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

1265. A person whose property is inalienable may be authorized by the court to dispose of the property if the interest that had justified the stipulation of inalienability has disappeared or where it is required by a higher interest.

1266. No stipulation of inalienability affecting an immovable may be set up against third persons unless the act containing it is registered

by deposit and notice is transmitted to the registrar for entry in the index of immovables. A similar stipulation affecting a movable may be set up against third persons only where they knew of its existence.

1267. A stipulation of inalienability of a property entails its unseizability with regard to any debt contracted before or during the period of inalienability by the person who receives the property.

1268. Any clause tending to prevent a person whose property is inalienable from contesting the validity of the stipulation of inalienability or from applying for authorization to transfer the property is deemed null.

The same rule applies to any penal clause to the same effect.

1269. Nullity of any alienation made notwithstanding a stipulation of inalienability and without leave from the court may be invoked only by the person who stipulated the inalienability and his assigns or by the person for whose benefit inalienability was stipulated.

CHAPTER II

SUBSTITUTION

SECTION I

NATURE AND SCOPE OF SUBSTITUTION

1270. Substitution exists where a person receives property by a liberality with the obligation of delivering it over to a third person after a certain period.

Substitution is established by gift or by will; it shall be evidenced in writing and registered by deposit.

1271. The person who has the obligation to deliver over is called the institute and the person who is entitled to take after him is called the substitute.

A substitute who takes with the obligation to deliver over becomes in turn the institute in respect of the subsequent substitute.

1272. A prohibition against disposing of the property by will that is subject to no other indication entails substitution in favour of the intestate heirs of the donee or legatee with respect to given or bequeathed property remaining at his death.

1273. No substitution may extend to more than two successive ranks of persons exclusive of the initial institute, and is without effect for subsequent ranks.

Transmissions between co-institutes upon the death of one of them, where it is stipulated that his share passes to the surviving institutes, is not considered to be made to a subsequent rank.

1274. Taking account of the required adaptations, the rules on successions, particularly those relating to the right to elect or to testamentary dispositions, apply to a substitution from and after the time it opens, whether created by gift or by will.

SECTION II

SUBSTITUTIONS BEFORE OPENING

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

1275. Before the opening of a substitution, the institute is the owner of the substituted property, which forms, within his personal patrimonium, a separate patrimonium intended for the substitute.

1276. Within two months after the gift or after acceptance of the legacy, the institute, in the manner of an administrator of the property of others, shall cause an inventory of the property to be drawn up at his expense, after convening the substitute.

1277. The institute, in exercising his rights and performing his obligations, shall act with prudence and diligence, in view of the rights of the substitute.

1278. The institute shall perform all acts necessary to maintain and preserve the property.

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

1279. The institute shall insure the property against ordinary risks such as fire and theft. He is, however, dispensed from that obligation if the insurance premium is too high in relation to the risks.

The insurance indemnity becomes substituted property.

1280. An institute is subject to the rules on usufruct as to his right to begin or continue agricultural, sylvicultural or mining operations on substituted land.

1281. An institute may alienate the substituted property by onerous title or lease it. He may also offer it as security if that required for its upkeep and conservation or to make an investment on behalf of the substitution.

The rights of the acquirer, creditor or lessee are unaffected by the rights of the substitute at the opening of the substitution.

1282. The institute is bound to reinvest, in the name of the substitution, the proceeds of any alienation of substituted property and the capital paid to him before the opening or that he has received from the grantor, in accordance with those provisions of the title on the administration of property of others which relate to investments presumed safe.

1283. On each anniversary of the date of inventory of the property, the institute shall inform the substitute of any change in it; he shall also inform him of any reinvestment he has made of the substituted property.

1284. If the constituting deed of the substitution provides therefor, the institute may dispose of the substituted property gratuitously or not reinvest the proceeds of its alienation; he has no right to bequeath it unless that is expressly permitted by the deed.

Upon the disposal, the substitution has effect only in respect of the property that was not disposed of by the institute.

1285. Creditors secured on substituted property may cause it to be seized and sold by judicial sale.

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

1286. The institute may, before the substitution opens, renounce his rights in favour of the substitute and deliver over the substituted property to him in anticipation.

In no case does renunciation by the institute prejudice the rights of his creditors or the rights of the eventual substitute.

§ 2.—*Rights of the substitute*

1287. Before the substitution opens, the substitute has a contingent right in the property substituted; he may dispose of or renounce the property and perform any conservatory act to ensure protection of his right.

1288. The substitute may, where the institute refuses or fails to have an inventory of the property drawn up within the required time, cause them to be drawn up at the expense of the institute. He shall then convoke the institute and other interested persons.

1289. The institute shall, if ordered by the court on the motion of the substitute or any interested person who establishes that such a measure is required, take out liability insurance or furnish security to guarantee the execution of his obligations.

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

1290. If the institute fails to execute his obligations or acts in a manner that endangers the rights of the substitute, the court may, depending on the gravity of the circumstances, deprive the institute of revenues, require him to restore the capital, declare his rights forfeited in favour of the substitutes or appoint a sequestrator chosen by preference from the substitutes.

1291. The rights of a substitute who is not yet conceived are exercised by the person designated by the grantor to act as curator to the substitution and who accepts the office or, failing him, the person appointed by the court at the request of the institute or any interested person.

The public curator may be appointed to act.

SECTION III

OPENING OF THE SUBSTITUTION

1292. Unless an earlier time has been fixed by the grantor, the opening of the substitution takes place on the death of the institute.

Where the institute is a legal person, no substitution may open more than thirty years after the gift or the opening of the succession, or after the day its right arises.

1293. Where it is stipulated that the share of an institute passes, on his death, to the surviving institutes of the same rank, the opening of the substitution takes place only on the death of the last institute.

Notwithstanding the foregoing, in no case may the opening so delayed prejudice the rights of the substitute who would have received on the death of an institute but for the stipulation; the right to receive is vested in the substitute but its exercise is suspended until the substitution opens.

1294. A substitute must have the required qualifications to receive by gift or by will at the time the substitution opens.

Where there are several substitutes of the same rank, only one need have the required qualifications to receive at the time his right arises to protect the right of all the other substitutes to receive, if they subsequently accept the substitution.

SECTION IV

SUBSTITUTION AFTER OPENING

1295. The substitute who accepts the substitution receives the property directly from the grantor and is, by the opening, seized of ownership of the property.

1296. The institute shall, at the opening, render account and deliver over the substituted property to the substitute.

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

1297. The institute shall deliver the property in the condition it is in at the opening of the substitution.

The institute is responsible for any loss or deterioration of the property caused by his fault or not resulting from normal use.

1298. Where the substitution affects only the residue of the property given or bequeathed, the institute shall deliver over only the property remaining and the balance due on the alienated property.

1299. The institute is entitled to the repayment, with the interest accrued from the opening, of capital debts paid by him without having been charged to do so and the expenses generally debited from the capital that he has incurred by reason of the substitution.

The institute is also entitled to the repayment in proportion to the duration of his right, of expenses generally debited from the revenues for any object that exceeds that duration.

1300. The institute is entitled to be reimbursed for the useful improvements he has made, subject to the rules applicable to possessors in good faith.

1301. The opening of a substitution revives the claims and debts that existed between the institute and the grantor and terminates the confusion, in the person of the institute, of the qualities of creditor and debtor, except in respect of interest accrued until the opening.

1302. The institute may retain the substituted property until payment of what is due to him.

1303. The heirs of the institute shall also perform the obligations that this section imposes on the institute and exercise the rights it confers on him.

The heirs of the institute shall continue anything that necessarily follows the acts performed by him or that cannot be deferred without risk of loss.

SECTION V

LAPSE AND REVOCATION OF SUBSTITUTION

1304. Lapse of a testamentary substitution with regard to an institute is effected without giving rise to representation and benefits his co-institutes or, failing co-institutes, the substitute.

Lapse of a testamentary substitution with regard to a substitute benefits his co-substitutes, if any; otherwise, it benefits the institute.

1305. The donor may revoke the substitution with regard to the substitute, until the opening, as long as it has not been accepted by or for the substitute. However, in respect of the donor, the substitute is deemed to have accepted where he is the child of the institute or where one of the co-substitutes has accepted the substitution.

1306. Revocation of a substitution with regard to the institute benefits the co-institute or, failing a co-institute, the substitute; revocation with regard to the substitute benefits the co-substitute or, failing a co-substitute, the institute.

1307. The grantor may reserve for himself the prerogative of determining the share of the substitutes or confer that prerogative on the institute.

The exercise of the prerogative by the donor does not constitute a revocation of the substitution even if in effect it completely excludes a substitute from the benefit of the substitution.

TITLE SIX

CERTAIN PATRIMONIUMS BY APPROPRIATION

CHAPTER I

THE FOUNDATION

1308. Foundation results from an act whereby a person irrevocably appropriates the whole or part of his property to the durable fulfilment of a socially beneficial object.

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

1309. The property of the foundation constitutes either an autonomous patrimonium distinct from that of the settlor or any other person, or the patrimonium of a legal person.

In the first case, the foundation is governed by the provisions of this title relating to a social trust, subject to the provisions of law; in the second case, the foundation is governed by the laws applicable to legal persons of the same kind.

1310. A foundation created by trust is established by gift or by will in accordance with the rules governing those acts.

1311. Unless otherwise provided in the constituting instrument of the foundation, the initial property of the trust foundation or any property substituted therefor or added thereto shall be durably maintained and allow for the fulfilment of the object, either by the distribution only of those revenues that derive therefrom or by a use that does not appreciably alter the substance of the initial property.

CHAPTER II

THE TRUST

SECTION I

NATURE OF THE TRUST

1312. A trust results from an act whereby a person called the settlor appropriates property to the fulfilment of an object and transfers from his patrimonium to another patrimonium property which he appropriates for a particular object and which a trustee undertakes, by his acceptance, to hold and administer.

1313. The trust patrimonium, consisting of the transferred trust property, constitutes a patrimonium by appropriation, autonomous and distinct from that of the settlor, trustee or beneficiary and in which none of them has any real right.

1314. A trust is established by contract, whether by onerous title or gratuitously, by will or, in certain cases, by operation of law.

1315. A trust is created upon the acceptance of the trustee or of one of the trustees if there are several.

In the case of a testamentary trust, the effects of the trustee's acceptance are retroactive to the day of death.

1316. Acceptance of the trust divests the settlor of the property, charges the trustee with seeing to the appropriation of the property and the administration of the patrimonium of the trust and is sufficient to establish the right of the beneficiary with certainty.

SECTION II

VARIOUS KINDS OF TRUSTS AND THEIR DURATION

1317. Trusts are created for personal objects, private objects or social objects.

1318. A personal trust is constituted gratuitously with the aim of securing a benefit for a determinate or determinable person.

1319. A private trust is a trust created for the object of erecting, maintaining or preserving a corporeal thing or of using a property appropriated to a specific use, whether for the indirect benefit of a person

or in his memory, or for securing the fulfilment of another private purpose.

1320. A trust created by onerous title, in particular, one created with the aim of allowing the making of profit by means of investments, providing for retirement or procuring another benefit for the settlor or for the persons he designates or for the members of an association or organization, or for employees or shareholders, is also a private trust.

1321. A social trust is a trust created to secure the fulfilment of a purpose of public or general interest, such as a trust established for cultural, educational, philanthropic, religious or scientific purposes.

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

1322. No personal trust created for the benefit of several persons successively may include more than two ranks of beneficiaries of the fruits and revenues apart from the beneficiary of the capital; it is without effect in respect of any lower ranks that it might contemplate.

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

1323. The right of beneficiaries of the first rank opens not later than one hundred years after the trust is created, even if a longer term was stipulated. The right of beneficiaries of subsequent ranks may open later but solely for the benefit of those beneficiaries who have the required quality to receive at the expiry of one hundred years after creation of the trust.

In no case may a legal person be a beneficiary for a period exceeding one hundred years, even if a longer term is stipulated.

1324. A private or social trust may be perpetual.

SECTION III

ADMINISTRATION OF A TRUST

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

1325. A person of full age and having the exercise of his civil rights, and a legal person authorized by law, may act as a trustee.

1326. The settlor or the beneficiary may be a trustee but he shall act jointly with a trustee who is neither the settlor nor a beneficiary.

1327. The settlor may designate one or several trustees or provide modalities for their designation or replacement.

1328. The court may, at the request of an interested person and after notice has been given to the persons it indicates, designate a trustee where the settlor, having manifested his intention of doing so, has nevertheless failed to do so or where it is impossible to designate or replace a trustee.

The court may similarly designate one or several additional trustees where required by the conditions of the administration.

1329. A trustee has the control and the exclusive administration of the trust patrimonium; he has all the rights of the patrimonium and may take any appropriate measure to secure its appropriation.

A trustee shall act as the administrator of the property of others charged with full administration.

§ 2.—*The beneficiary and his rights*

1330. The beneficiary of a trust created gratuitously shall be qualified to receive by gift or by will at the time his right opens.

Where there are several beneficiaries of the same rank, it is sufficient that one of them be qualified to receive at the time the right opens to preserve the right of the other beneficiaries if they avail themselves of it.

1331. The beneficiary of a trust shall, in order to receive, meet the conditions required by the constituting instrument.

1332. The settlor may reserve the right to receive the fruits and revenues or even, where such is the case, the capital of the trust, even a trust established by gratuitous title, or participate in the benefit that it procures.

1333. The settlor may reserve for himself or confer on the trustee or a third person the power to elect the beneficiaries or determine their shares.

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

1334. The power to elect the beneficiaries or determine their shares is at the discretion of the person exercising it, who may change or revoke his decision if the fulfilment of the trust requires it.

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

1335. While the trust is in effect, the beneficiary has the right to require, according to the constituting instrument, either the provision of a benefit granted to him or the payment of the fruits and revenues and of the capital, or of only one of these.

1336. The beneficiary of a trust established by gratuitous title is presumed to have accepted the right granted to him and he is entitled to dispose of it.

The beneficiary may renounce his right at any time.

1337. Where a beneficiary renounces his right or his right no longer has effect, the right passes, in proportion to the share of each, to the co-beneficiaries of the fruits and revenues or of the capital according as he is the beneficiary of the fruits and revenues or of the capital.

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

§ 3.—*Measures of supervision and control*

1338. The administration of a trust is subject to the supervision of the settlor or of his heirs if he has died, and of the beneficiary, even a future beneficiary.

In addition, in cases provided for by law, the administration of private or social trust is subject, according to their objects and purposes, to the supervision of the persons or bodies designated by law.

1339. Upon the establishment of a private or social trust subject to the supervision of a person or body designated by law, the trustee shall file with the person or body a statement indicating, in particular, the nature, object and term of the trust and the name and address of the trustee.

The trustee shall, at the request of the person or body, allow the trust records to be inspected and furnish any account, report or information requested of him.

1340. The rights of the beneficiary of a personal trust, if not yet conceived, are exercised by the person designated by the settlor to act as curator and who accepts the office or, failing a curator, by the person appointed by the court at the request of the trustee or any interested person. The public curator may be designated to act.

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

1341. The settlor, the beneficiary or, as the case may be, any other interested person may, notwithstanding any stipulation to the contrary, take action against the trustee to compel him to execute his obligations or to perform any act which is necessary in the interest of the trust, to enjoin him to abstain from any action harmful to the trust or to have him removed.

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

1342. The court may authorize the settlor, the beneficiary or, as the case may be, another interested person to take legal action in the place and stead of the trustee when, without sufficient reason, he refuses or neglects to act or is prevented from acting.

1343. The trustee, the settlor and the beneficiary are jointly and severally liable for acts executed in fraud of the rights the creditors of the settlor or of the trusteeship patrimonium.

SECTION IV

CHANGES TO THE TRUST AND TO THE PATRIMONIUM

1344. Any person may increase the trust patrimonium by transferring property to the patrimonium by contract or by will in conformity, in so doing, with the rules applicable to the establishment of a trust. The person does not acquire the rights of a settlor by that fact.

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

1345. Where a trust has ceased to meet the first intent of the settlor, particularly as a result of circumstances unknown to him or unforeseeable and which make the fulfilment of the trust impossible, the court may, on the application of an interested person, terminate

the trust; the court may also, in the case of a social trust, substitute another closely related object for the original object of the trust.

Where the trust continues to meet the intent of the settlor but new measures would allow a more faithful compliance with his intent or favour the fulfilment of the trust, the court may amend the provisions of the constituting instrument and, in particular, allow the trust to be prolonged.

1346. Notice of the application shall be given to the settlor and to the trustee and, where such is the case, to the beneficiary, to the liquidator of the succession of the settlor, or his heirs, or to any other person or body designated by law, where the trust is subject to their supervision.

SECTION V

TERMINATION OF A TRUST

1347. A trust is terminated by the renunciation or the lapse of the right of the sole beneficiary of the capital or by the renunciation or the lapse of the right of the beneficiary of the fruits and revenues, if no beneficiary of the capital has been designated.

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

1348. At the termination of a trust, the trustee shall deliver the property to those who are entitled to it.

Where there is no beneficiary, any property remaining when the trust is terminated devolves to the settlor or his heirs.

1349. The property of a social trust that terminates by the impossibility of its fulfilment devolves to a trust, to a legal person or to any other group of persons devoted to a purpose as nearly like that of the trust as possible, designated by the trustee or, failing that, by the court.

TITLE SEVEN

ADMINISTRATION OF THE PROPERTY OF OTHERS

CHAPTER I

GENERAL PROVISIONS

1350. Any person who, by authority of law or by virtue of a legal instrument, is charged with the administration of property or a patrimonium that is not his own, assumes the office of administrator of the property of others.

1351. Unless, pursuant to the law, the instrument or the circumstances, the administration is gratuitous, the administrator is entitled to the remuneration fixed in the instrument or by law or, failing that, according to the value of the services rendered or usage.

A person acting without right or authorization is not entitled to any remuneration.

CHAPTER II

KINDS OF ADMINISTRATION

SECTION I

SIMPLE ADMINISTRATION OF THE PROPERTY OF OTHERS

1352. The person charged with simple administration shall perform all the acts necessary for the preservation of the property or expedient for the maintenance of the use for which the property is ordinarily destined.

1353. An administrator responsible for simple administration is bound to collect the fruits and revenues of the property under his administration and to exercise the rights attached to the property.

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

1354. An administrator shall continue the use of the property which produces fruits and revenues without changing its destination, except with the authorization of the beneficiary or, if that is prevented, by the court.

1355. An administrator is bound to invest the sums of money under his administration in accordance with the rules of this title relating to investments presumed to be safe investments.

An administrator may likewise change any investment made before he took office or that he has made himself.

1356. An administrator, with the authorization of the beneficiary or, if the beneficiary is prevented from acting, of the court, may alienate the property by onerous title or encumber it with a security where that is necessary for the payment of the debts, maintenance of the use for which property is ordinarily destined, or the preservation of its value.

An administrator may, of his own initiative, notwithstanding anything in this article, alienate any property that is perishable or likely to depreciate rapidly.

SECTION II

FULL ADMINISTRATION OF THE PROPERTY OF OTHERS

1357. A person charged with full administration shall preserve the property and make it productive, increase the patrimonium or appropriate it to a purpose, where the interest of the beneficiary or the fulfilment of the object requires it.

1358. An administrator may, to execute his obligations, alienate the property by onerous title, encumber it with charges or a real right or change its destination and perform any act, including any form of investment, that he considers necessary or expedient.

CHAPTER III

RULES OF ADMINISTRATION

SECTION I

OBLIGATIONS OF THE ADMINISTRATOR TOWARDS THE BENEFICIARY

1359. The administrator of the property of others shall, in exercising his functions, comply with the obligations imposed on him by law or by the constituting instrument; he shall act within the powers conferred on him and in accordance with their object.

He is not liable for loss or deterioration of the property as the result of a fortuitous event or resulting from its age, its perishable nature or its normal and authorized use.

1360. An administrator shall act with the prudence, diligence and competence of a prudent and reasonable person acting in similar circumstances.

1361. An administrator shall act honestly and faithfully, in the best interest of the beneficiary or of the object pursued.

1362. No administrator may exercise his powers in his own interest or that of a third person or place himself in a position putting his own interest in conflict with his obligations as administrator.

If the administrator himself is a beneficiary, he shall exercise his powers in the common interest, giving the same consideration to his own interest as to that of the other beneficiaries.

1363. An administrator shall, without delay, notify in writing the beneficiary of any interest he has in an undertaking that is apt to place him in a position of conflict of interest and of the rights he has against the beneficiary or in the property administered indicating, where such is the case, the nature and value of the rights, but he is not bound to notify the interest or rights deriving from the act having given rise to the administration.

Notification shall be made to the person or body designated by law any interest or rights pertaining to a trust under the supervision of the person or body.

1364. No administrator may, in the course of his administration, become a party to a contract affecting the administered property or acquire otherwise than by succession any right in the property or against the beneficiary.

Notwithstanding the first paragraph, the administrator may do the acts prohibited there with the express authorization of the beneficiary or the court in case of impediment or if there is no determined beneficiary.

1365. No administrator may mingle the administered property with his own property.

1366. No administrator may use for his benefit the property he administers or information he obtains by reason of his administration except with the consent of the beneficiary or unless it results from the law or the constituting instrument of the administration.

1367. Unless it is of the very nature of his administration to do so, no administrator may dispose gratuitously of the property entrusted

to him; he may do so nevertheless in the case of property of small value, if it is disposed of in the interest of the beneficiary or of the object pursued.

No administrator may, except for valuable consideration, renounce any right belonging to the beneficiary or forming part of the patrimonium administered.

1368. An administrator may sue and be sued in respect of anything connected with his administration; he may also intervene in any action respecting the administered property.

1369. If there are several beneficiaries of the administration, concurrently or successively, the administrator shall act impartially in their regard, taking account of their respective rights.

1370. The court, in appreciating the responsibility of an administrator, may take account of the fact that the person acts gratuitously, that he is a minor or a person of full age under protective supervision or that he was designated by reason of his professional competence.

SECTION II

OBLIGATIONS OF THE ADMINISTRATOR AND BENEFICIARY TOWARDS THIRD PERSONS

1371. Where an administrator binds himself, within the limits of his powers, in the name of the beneficiary or the trust patrimonium, he is not personally responsible towards the third persons with whom he enters into contracts.

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

1372. Where an administrator exceeds his powers, he is responsible towards the third persons with whom he enters into contracts unless he gives them sufficient communication of that fact or unless the obligations contracted have been expressly or tacitly ratified by the beneficiary.

1373. An administrator who exercises alone powers that his mandate requires him to exercise jointly with another person is deemed to have exceeded his powers.

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

1374. The beneficiary is responsible towards third persons for the damage caused by the fault of the administrator in the exercise of his functions only up to the amount of the benefit he has derived thereby. In the case of a trust, these obligations fall back upon the patrimonium.

1375. Where a person capable of exercising civil rights has given reason to believe that another person was the administrator of his property, he is responsible towards third persons who have contracted in good faith with that other person as though the property had been under administration.

SECTION III

INVENTORY, SECURITY AND INSURANCE

1376. An administrator is not bound to make an inventory, to take out liability insurance or furnish other security unless required to do so by law or by the instrument, or, again, by the court on the application of the beneficiary or any interested person.

Where the instrument creates the obligations, the administrator may apply for an exemption if circumstances warrant.

1377. In making its decision, the court having cognizance of the application shall take account of the value of the property administered, the situation of the parties and the other circumstances.

The court shall grant the application only where that does not call into question the terms of the initial agreement between the administrator and the beneficiary.

1378. The inventory an administrator may be bound to make shall contain a faithful and exact enumeration of all the property entrusted to his administration or constituting the administered patrimonium.

It shall contain the following in particular:

1. The description of the immovables, and a description of the movables, with indication of their fair value;

2. A description of the currency in cash and other securities;

3. A listing of valuable documents.

The inventory shall also contain a debt statement and conclude with a recapitulation of assets and liabilities.

1379. The inventory shall be executed before a notary or made in a private writing before two witnesses. In the latter case, the author and the witnesses shall sign it, indicating the date and place of execution.

1380. Where the administered patrimonium contains personal effects of the holder of the patrimonium or, as the case may be, of the deceased, a general reference to them in the inventory is sufficient, describing only clothing, personal papers, jewelry or everyday objects worth over $100 each.

1381. A universality of assets and liabilities, such as an enterprise or a commercial undertaking, together with its accessories is validly described in the inventory if the entry is sufficient to permit a block sale, provided, however, that each of the immovables is individually named.

1382. The property described in the inventory is presumed to be in good condition on the date of preparation of the inventory, unless the administrator appends a document attesting the contrary.

1383. The administrator shall furnish a copy of the inventory to the person who entrusted him with the administration and to that person's beneficiary, and also to every other person he knows to have an interest. He shall also, where required by law, file the inventory or notice of the close of the inventory in the indicated place, specifying where it may be consulted.

Any interested person may contest the inventory or any item therein; he may also demand that a new inventory be prepared.

1384. An administrator may insure the property entrusted to him against ordinary risks such as fire and theft at the expense of the beneficiary or trust.

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

SECTION IV

JOINT ADMINISTRATION AND DELEGATION

1385. Where several administrators are charged with the administration, a majority of them may act unless the instrument or the law requires them to act jointly or in some other proportion.

1386. Where the administrators are prevented from acting by a majority or in the specified proportion, owing to an impediment or the systematic opposition of some of them, the others may act alone

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

Where the situation continues and the administration is seriously impaired by it, the court, on the application of an interested person, may dispense the administrators from acting in the specified proportion, divide their duties, give a casting vote to one of them or make any order it sees fit in the circumstances.

1387. Joint administrators are jointly and severally liable for their administration.

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

1388. An administrator is presumed to have approved any decision made by his co-administrators. He is responsible with them for the decision unless he immediately indicates his dissent to them and notifies it to the beneficiary within a reasonable time.

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

1389. An administrator is presumed to have approved a decision made in his absence unless he makes his dissent known to the other administrators and to the beneficiary within a reasonable time after becoming aware of the decision.

1390. An administrator may delegate his duties or be represented by a third person for specific acts; however, no administrator may delegate generally the conduct of the administration or the exercise of a discretionary power, except to his co-administrators.

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

1391. A beneficiary who suffers prejudice may repudiate the administration of the person mandated by the administrator contrary to the instrument or to usage.

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

SECTION V

PRESUMED SOUND INVESTMENTS

1392. Investments in the following property are presumed sound:

1. Corporeal immovables situated in Québec;

2. Bonds or other titles of indebtedness issued or guaranteed by Québec, Canada or a province of Canada, the United States of America or of any of its member states, the International Bank for Reconstruction and Development, a municipality or a school board in Canada, or a fabrique in Québec;

3. Bonds or other titles of indebtedness issued by a legal person operating a public service in Canada and which is entitled to impose a tariff for such service;

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

5. Bonds or other titles of indebtedness of a company in the following cases:

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

(*b*) They are secured by a pledge of equipment ranking first and the company has regularly serviced its other borrowings during the last ten financial years;

(*c*) They are issued by a company whose common shares are presumed sound investments;

6. Bonds or other titles of indebtedness issued by a loan society incorporated by a statute of Québec or authorized to do business in Québec under the Loan and Investment Societies Act (R.S.Q., chapter S-30), provided it has been specially approved by the Government and its ordinary operations in Québec consist in making loans to municipal or school corporations and to fabriques or loans secured by hypothec ranking first on immovables situated in Québec;

7. Debts secured by hypothec on immovables in Québec:

(*a*) If payment of the capital and interest is guaranteed or secured by Québec, Canada or a province of Canada;

(*b*) If the amount of the debt is not more than seventy-five per cent of the value of the immovable property securing payment of the debt after deduction of the other debts secured by the same immovable and ranking equally with or before the debt;

(*c*) If the amount of the loan that exceeds seventy-five per cent of the value of the immovable by which it is secured, after deduction of the other debts secured by the same immovable and ranking equally with or before the debt, is guaranteed or secured by Québec, Canada or a province of Canada, the Central Mortgage and Housing Corporation, the Société d'habitation du Québec or a hypothec insurance policy issued by a corporation holding a permit under the Act respecting insurance (R.S.Q., chapter A-32);

8. Fully paid preferred shares issued by a company whose shares are presumed sound investments and which, during the last five financial years, has distributed the stipulated dividend out of its annual operating profit;

9. Fully paid common shares issued by a company that for three years has been meeting the timely disclosure requirements defined in the Securities Act (R.S.Q., chapter V-1.1), to such extent as they are listed by a stock exchange recognized for that purpose by an order of the Government passed on the recommendation of the Commission des valeurs mobilières, and when the price-earnings ratio, not considering preferred shares or bloks of shares of ten per cent or more, is higher than that fixed in the order;

10. Shares of a mutual fund and units of an unincorporated mutual fund of a private trust, provided that sixty per cent of their portfolio consists of presumed sound investments, in the following cases:

(*a*) The shares or units meet the requirements of subparagraph *a* of paragraph 11 of section 3 of the Securities Act (R.S.Q., chapter V-1.1);

(*b*) The fund has been fulfilling the timely disclosure defined by that Act for three years.

1393. The administrator shall decide on the investments to make according to the anticipated yield and rise in value; so far as possible, he shall work toward a diversified portfolio producing fixed revenues and variable revenues in the proportion suggested by cyclical conditions.

Notwithstanding the foregoing, the administrator shall not acquire more than five per cent of the shares of the same corporation, nor acquire shares, bonds or other titles of indebtedness of a legal person which

has failed to pay the prescribed dividends on its shares or interest on its bonds or other securities, nor grant a loan to that legal person.

1394. An administrator may deposit the sums of money entrusted to him in or with a bank, savings bank, trust company, société d'entraide économique or a savings and credit union, if the deposit is repayable on demand or on thirty day's notice.

The administrator may deposit the sums of money for a longer term with the permission of and on the conditions fixed by the court.

1395. An administrator may maintain the investments existing upon his taking office even if they are not presumed sound investments.

The administrator may also hold securities which, following the reorganization, the winding-up or amalgamation of a legal person replace securities he held.

1396. An administrator who acts in accordance with this section is presumed to act prudently.

An administrator who makes an investment he is not authorized to make is, by that very fact and without further proof of fault, liable for any loss resulting from it.

1397. Investments made in the course of administration shall be made in the name of the administrator acting in his capacity.

SECTION VI

APPORTIONMENT OF PROFIT AND EXPENDITURE

1398. Apportionment of profit and expenditure between the beneficiary of the fruits and revenues and the beneficiary of the capital shall be made in accordance with the stipulations and evident intention of the constituting instrument.

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

1399. The revenue account is generally debited for the following expenditures and other expenditures of the same kind:

1. Insurance premiums, the cost of minor repairs and other ordinary expenses of administration;

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

3. Taxes payable on the administered property;

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

5. Amortization of the property, except property used by the beneficiary for personal purposes.

An administrator may, to maintain revenue at a regular level, spread substantial expenses over a reasonable period.

1400. The capital account is generally debited for expenditures that are not debited from the revenues, including expenses pertaining to capital investment, alienation of property, safeguard of the rights of the capital beneficiary or the right of ownership of the administered property.

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

1401. The beneficiary of the fruits and revenues is entitled to the net income of the administered property from the date determined in the instrument giving rise to the administration, or if no date is determined, from the date of the beginning of the administration or that of the death.

1402. Fruits and revenues payable periodically are counted per diem.

Dividends and distributions of a legal person are due from the date indicated in the declaration of distribution, failing that, from the date of the declaration.

1403. At the extinction of his right, the beneficiary of the fruits and revenues is entitled to the fruits and revenues that have not been paid to him and to the portion earned but not yet collected by the administrator.

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

SECTION VII

ANNUAL ACCOUNT

1404. An administrator shall render a summary account of his administration to the beneficiary at least once a year.

1405. The account shall be sufficiently detailed to allow verification of its accuracy.

Any interested person may, on a rendering of account, apply to the court to order the account verified by an auditor.

1406. Where there are several administrators, they shall render one and the same account unless their duties have been divided by law, the instrument or the court, and the division has been made accordingly.

1407. An administrator shall at all times allow the beneficiary to examine the books and vouchers relating to the administration.

CHAPTER IV

TERMINATION OF ADMINISTRATION

SECTION I

CAUSES TERMINATING ADMINISTRATION

1408. The duties of an administrator terminate upon his death, resignation or replacement or his becoming bankrupt or being placed under protective supervision.

The duties of an administrator are also terminated where the beneficiary becomes bankrupt or is placed under protective supervision if that affects the administered property.

1409. Administration is terminated

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

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

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

1410. An administrator may resign at any time by giving written notice to the beneficiary and, where such is the case, his co-

administrators or the person empowered to appoint an administrator in his place. Failing such persons or where it is impossible to give notice to such persons, the notice is given to the public curator who shall, if necessary, assume the provisional administration of the property and cause a new administrator to be appointed in place of the administrator who has resigned.

The administrator of a public trust or social trust shall also notify his resignation to the person or body designated by law to supervise his administration.

1411. The resignation of an administrator takes effect on the date the notice is received or on any later date indicated in the notice.

1412. An administrator is liable for any damage caused by his resignation where it is submitted without valid reason and at an inopportune moment or where it amounts to failure of duty.

1413. A beneficiary who has entrusted the administration of property to another person may replace the administrator or terminate the administration, particularly by exercising his right to require that the property be returned to him on demand.

Any interested person may move that an administrator who is unable to discharge his duties or does not fulfil his obligations be replaced.

1414. Upon the death of the administrator, the liquidator of his succession, if he is aware of the administration, shall notify the death to the beneficiary and to the co-administrators, if any, or, in the case of a private trust or social trust, to the person or body designated by law to supervise the administration.

The liquidator shall also, in respect of any matter already begun, do all that is immediately necessary to prevent a loss; he shall also render account and deliver over the property to those entitled to it.

1415. Obligations contracted towards third persons in good faith by an administrator who is unaware that his administration has terminated are valid and oblige the beneficiary or the trust patrimonium; the same rule applies to obligations contracted by the administrator after the end of the administration that are its necessary consequence or are required to prevent a loss.

The beneficiary or the patrimonium is also bound by the obligations contracted towards third persons who were unaware that the administration has terminated.

SECTION II

RENDERING OF ACCOUNT AND DELIVERY OF THE PROPERTY

1416. On termination of his administration, an administrator shall render a final account of his administration to the beneficiary and, where such is the case, to the administrator replacing him or to his co-administrators. Where there are several administrators and their duties are terminated simultaneously, they shall render one and the same account, except where their duties are divided.

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

The acceptance of the account by the beneficiary closes the account.

1417. An administrator may at any time and with the consent of all the beneficiaries render account by agreement.

If the account is not rendered by agreement, the rendering of account is made judicially.

1418. An administrator shall deliver over the administered property at the place agreed upon or, failing that, where it is.

1419. An administrator shall deliver over all that he has received in the performance of his duties even if what he has received was not due to the beneficiary or to the trust patrimonium; he is also accountable for any personal profit or benefit he has realized by using, without authorization, information he had obtained by reason of his administration.

Where an administrator has used property without authorization, he is bound to compensate the beneficiary or patrimonium for his use by paying an appropriate rent or the interest on the money from the date when the property was used.

1420. Administration expenses, including the cost of rendering account and delivering the property, are borne by the beneficiary or patrimonium.

The resignation or replacement of the administrator obliges the beneficiary or trust patrimonium to pay him, apart from the administration expenses, any remuneration he has earned.

1421. An administrator owes interest on the balance from the close of the final account or the formal notice to produce it; the

beneficiary or the trust patrimonium owes interest only from the formal notice.

1422. An administrator is entitled to deduct from the sums he is required to remit what the beneficiary or patrimonium owes him by reason of the administration.

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

1423. Where there are several beneficiaries, their obligation towards the administrator is joint and several."

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

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

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