NATIONAL ASSEMBLY
Thirty-third Legislature, first session

1987, chapter 18
AN ACT TO ADD THE REFORMED LAW OF PERSONS, SUCCESSIONS AND PROPERTY TO THE CIVIL CODE OF QUÉBEC

Bill 20
Introduced by Mr Herbert Marx, Minister of Justice
Introduced 19 December 1985
Passage in principle 19 December 1985
Passage 15 April 1987
Assented to 15 April 1987

Coming into force: on the date fixed by the Government

Act amended:
Civil Code of Québec

Éditeur officiel
Québec

CHAPTER 18

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

[*Assented to 15 April 1987*]

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

C. C. Q., aa. 1-399, added

1. A preliminary provision 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:

"PRELIMINARY PROVISION

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

The Civil Code comprises a body of rules which, in all matters within the letter, spirit or object of its provisions, lays down the *droit commun*, 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.

2. Every person has a patrimony.

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

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

These rights are inalienable.

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

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

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 exercise of his civil rights, except to the extent consistent with public order.

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

TITLE TWO

CERTAIN PERSONALITY RIGHTS

CHAPTER ONE

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 or removal of tissue, treatment or any other act.

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

Notwithstanding the foregoing, a minor fourteen years of age may consent alone to the care. If his 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. Where a person of full age is unable to consent to care required by his state of health, consent is given by his tutor or curator. If he cannot be so represented in due time, or if he is not under tutorship, 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.

15. The permission of the court is required to cause a minor fourteen years of age to undergo care required by his state of health if he refuses it.

The permission of the court is also required where the person who may give consent in the place of a person of full age or minor who is unable to give consent is prevented from doing so or, without justification, refuses to do so; it is required as well if a person of full age who is unable to give consent categorically refuses to undergo care, except in the case of everyday care or in an emergency.

16. Consent to care not required by the state of health of a minor fourteen years of age is given jointly by the minor and by the person having parental authority or his tutor.

Notwithstanding the foregoing, the minor may consent alone to the care if it is of a minor character or entails no serious risk to his health nor any major and permanent effects.

17. Where the minor is under fourteen years of age or the person is unable to give consent, consent to care not required by his state of health is given by the person having parental authority or the tutor or curator and the permission of the court is required.

Notwithstanding the foregoing, the person having parental authority, the tutor or the curator may consent alone to the care if it is of a minor character or entails no serious risk to health nor any major and permanent effects.

18. A person of full age may alienate part of his body *inter vivos* or undergo an experiment, provided the risk assumed is not disproportionate to the anticipated benefit.

The person having parental authority, the tutor or the curator may, subject to the same condition and with the permission of the court, give consent to an alienation or experiment which concerns a minor or a person of full age who is unable to give consent. However, the refusal of a minor fourteen years of age precludes any alienation or experiment.

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 a grave reason.

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 the permission of the court.

Consent may be given by the person having parental authority or by the tutor or curator, where the person is unable to do so.

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 the living conditions.

If the confined person is under fourteen years of age or is incapable of discernment, the information shall be given to the person having

parental authority and to the tutor or curator if any or, failing them, to the close relatives or friends.

26. Where it is proved that a person is a grave 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 grave 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 and 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 grave danger to himself or to others, with the ability 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 the required consent, except by authorization of the court.

31. The other rules respecting psychiatric examinations, the confinement of persons who are a grave danger to themselves or to

others and the review of judgments which order such confinement 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. Every decision concerning a child shall be taken in light of 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 to his other circumstances.

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. The following acts, in particular, may be considered to be an invasion of the privacy of a person:

(1) Entering a person's dwelling or taking anything 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 legitimate 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. Except as otherwise provided by law, a person may, free of charge, examine and cause the rectification of any file kept on him by another person in view of a decision in his regard or for the information of a third person. He may also cause a copy of it to be made at reasonable cost. The information contained in the file must be accessible in an intelligible transcript.

39. A person keeping a file on a person may deny him access to information in the file where he has a serious and legitimate reason to do so or where the information concerns third persons.

The keeper of the file may deny access to the whole file where the file consists for the greater part of information concerning third persons. In other cases, he must allow access to the file, after ensuring that such information is protected.

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

Notice of the rectification shall be given without delay to every person having received the information in the preceding six months and, where such is the case, to the person who is that person's source. The same rule applies to an application for rectification, if it is contested.

41. Where the law does not provide the conditions or modalities of exercise of the right of examination or of rectification of a file, the court shall determine them on application.

Similarly, where it becomes difficult to exercise those rights, the court shall settle the difficulty on application.

CHAPTER IV

RESPECT FOR THE BODY AFTER DEATH

42. 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.

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

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.

44. A physician may remove a part of the body of a deceased person if, in the absence of knowledge or presumed 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 operation and the serious hope of saving a human life or of improving its quality to an appreciable degree.

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

46. 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.

47. 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.

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

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

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

TITLE THREE

CERTAIN PARTICULARS RELATING TO THE STATUS OF PERSONS

CHAPTER ONE

NAME

SECTION I

ASSIGNMENT OF NAME

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

51. 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.

52. 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.

Notwithstanding the foregoing, the registrar may, in the interest of the child, assign to the child only the surname of the father or of the mother.

53. 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.

54. 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.

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

SECTION II

USE OF NAME

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

57. Every person shall use one or more of the given names assigned to him in his act of birth.

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

59. 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 damage caused.

SECTION III

CHANGE OF NAME

§ 1.—*General provision*

60. 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 way of administrative process*

61. 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 of the mother.

The competence of the registrar includes all other cases which do not come under the exclusive jurisdiction of the court.

62. 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. If the change applied for concerns the surname, the application is also valid for his minor children who bear the same surname or part of that surname.

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

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

64. 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 his children's 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.

65. 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.

Notwithstanding the foregoing, in the case provided for in subparagraph 4 of the first paragraph of article 61, only the minor has the right to object.

66. 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.

67. 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*

68. The court has exclusive jurisdiction to authorize the change of the name of a child in the case of a change of filiation or in the case of the withdrawal of parental authority.

Similarly, the court has exclusive jurisdiction where the change applied for is the removal from the name of a minor child of a part taken from the surname of his father or mother.

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

The minor acting alone may also object to an application.

§ 4.—*Effects of a change of name*

70. 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.

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

72. 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.

73. 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

74. 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.

75. The application shall be made to the registrar of civil status and shall be accompanied with, in addition to the other relevant documents, a certificate of the physician who took part in the treatments 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.

76. 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.

77. The rules relating to the effects of a change of name, adapted as required, apply to a change of designation of sex.

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

SECTION V

REVIEW OF DECISIONS

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

CHAPTER TWO

DOMICILE AND RESIDENCE

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

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

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

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

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

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

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

84. An unemancipated minor is domiciled with his tutor.

85. 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 usually resides unless the court has fixed the domicile of the child elsewhere.

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

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

88. 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

89. 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.

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

91. 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.

92. 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.

93. 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.

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

95. 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.

In either case, 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.

96. 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.

97. 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*

98. 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.

99. A declaratory judgment of death may be pronounced even before the laps 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.

100. 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.

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

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

102. 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*

103. 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.

104. 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.

If the date of death is proved to follow that fixed by the judicial declaration of death, the dissolution of the matrimonial regime is retroactive to the date fixed by the judicial declaration of death but the succession is open only from the true date of death.

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

SECTION III

RETURN

105. 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 and the matrimonial benefits deriving from the dissolution of the marriage, 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.

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

107. A person who has returned recovers his property in the condition in which it is and what is left 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.

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

109. An apparent heir 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 applies to resume possession of his property.

SECTION IV

PROOF OF DEATH

110. 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

111. 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

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

113. 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.

114. 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.

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

SECTION III

ACTS OF CIVIL STATUS

§ 1.—*General provisions*

116. 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.

117. 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.

118. 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.

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

§ 2.—*Acts of birth*

120. 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.

121. 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.

122. 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.

123. Only the father or the mother may declare the filiation of a child with regard to himself or herself. However, where the child is conceived or born during the marriage or while the father and mother are living together, one of the parents may declare the filiation of the 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.

124. The declaration of birth shall state the name 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 person who makes the declaration shall attach to it one duplicate of the attestation of birth.

125. 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.

126. In cases where he gives shelter to or takes custody of the child, the person who makes the declaration shall attach a note to it relating the facts and circumstances and indicating, if known to him, the names of the father and mother.

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

§ 3.—*Acts of marriage*

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

129. 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 quality of the officiant and indicate, where such is the case, his religious affiliation.

130. 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 consents obtained.

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

§ 4.—*Acts of death*

132. 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.

133. 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.

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

135. 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.

136. 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 person who makes the declaration shall attach to it a duplicate of the attestation of death.

137. 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.

138. 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*

139. 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 judgments affecting the status of a person, such as declaratory judgments of death, judgments to reconstitute or replace an act of civil status and judgments of divorce and in nullity of marriage.

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

140. 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.

141. Where the declaration and the attestation contain contradictory particulars, 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.

142. The registrar of civil status shall draw up a new act of civil status immediately upon receiving notification of a judgment changing an essential particular in any act of civil status, such as a judgment changing the name or filiation of a person, declaring an adoption or recognizing an adoption effected outside Québec.

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.

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.

143. 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.

144. 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.

145. 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.

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

Upon notification of a judgment in nullity of a marriage or annulling a declaratory judgment of death, the registrar shall cancel the act of marriage or of death, as the case may be, as well as the notations made of that act in the acts of birth and marriage of each of the persons concerned.

147. 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 object and 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.

148. 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 as though it were an act drawn up in Québec.

149. 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.

150. If an act of civil status 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.

151. 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 in Québec.

152. 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.

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

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

154. The registrar of civil status shall rectify errors in writing 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.

155. 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*

156. 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.

157. Where the whole or part of one of the duplicates of the register is lost, the registrar of civil status shall lay down the procedure for its reconstitution and reconstitute it on the basis of the other duplicate, the computerized version or any other information.

158. 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

159. 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, certificates and attestations issued under this section are authentic.

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

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

It shall also bear the serial number of the act of civil status.

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

163. 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 an attestation to any person applying for it if the particular or event it attests to appears on a certificate; if the particular or event appears on a copy, he shall issue an attestation only to persons who establish their interest.

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

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

165. 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.

166. 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.

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.

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

167. In Cree, Inuit or Naskapi communities, the local registry officer or another public servant appointed under any Act respecting Cree, Inuit and Naskapi native persons may be authorized to act as a delegate of the registrar of civil status.

TITLE FOUR

CAPACITY OF PERSONS

CHAPTER I

MAJORITY AND MINORITY

SECTION I

MAJORITY

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

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

169. 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

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

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

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

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

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

174. 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.

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

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

177. Any act performed by the tutor without leave from the court although the nature of the act requires it may be annulled on the application of the minor without his having to prove damage.

178. A minor who suffers damage from an act he performed alone or which was performed by his tutor without the authorization of the tutorship council although the nature of the act requires it may apply for the annulment of the act or the reduction of the obligations arising from it.

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

In no case may a minor avoid the obligations arising from offences or quasi-offences committed by him or apply for their reduction.

180. 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.

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

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

SECTION III

EMANCIPATION

§ 1.—*Simple emancipation*

183. 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. The tutor shall send a copy to the public curator.

Emancipation is effective from the filing of the declaration.

184. 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.

185. The tutor is accountable for his administration to the emancipated minor; he shall, however, continue to assist him gratuitously.

186. 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.

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

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

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

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

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

190. Loans or borrowings of large amounts, considering the patrimony of an emancipated minor, and deeds of alienation of an immovable or enterprise 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 the act or the reduction of the obligations arising from it.

§ 2.—*Full emancipation*

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

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

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

CHAPTER II

TUTORSHIP TO MINORS

SECTION I

TUTORSHIP

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

193. 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.

194. Tutorship is a personal office accessible to every natural person capable of fully exercising his civil rights and who is suited for the office.

195. 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 property, the public curator.

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

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

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

Notwithstanding the foregoing, a father and mother may receive the remuneration fixed by the court for the administration of the property of their child where that is one of their principal occupations.

199. 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.

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

201. Where tutorship extends to the person of the minor and is exercised by a person other than the father or mother, the tutor shall assume alone the rights and duties relating to the custody, supervision and education of the minor; the tutor shall act as the person having parental authority whenever the law provides that that person may act.

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

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

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

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

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

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

The court 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.

207. 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

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

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

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

210. 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.

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

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

213. 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.

214. 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.

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

SECTION III

DATIVE TUTORSHIP

216. 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.

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

218. 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.

219. Except where the designation is contested, the tutor appointed by the father or mother assumes office upon accepting it, after the death of the last surviving parent.

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

220. If the tutor appointed by the father or mother accepts the tutorship, he shall so notify the liquidator of the succession and the public curator.

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

222. 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.

223. 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 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.

224. The minor, the father or mother and close relatives and relatives by marriage of the minor 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.

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

SECTION IV

ADMINISTRATION OF TUTORS

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

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

228. 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 property.

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

230. No tutor may transact or prosecute an appeal without the authorization of the tutorship council.

231. The tutor, before contracting a large loan in relation to the patrimony of the minor, offering property as security, alienating an important piece of family property, an immovable or an enterprise, or demanding the definitive partition of immovables held by the minor in undivided ownership, shall obtain leave from the court, which shall seek the advice of the tutorship council.

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

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

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

234. 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 patrimony of a minor and of any transaction effected pursuant to an action to which the tutor is a party in that quality.

235. 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.

236. A tutor shall set aside from the property under his administration all sums necessary to pay the expenses of the tutorship, in particular, to provide for the exercise of the civil rights of the minor, the administration of his patrimony and for his maintenance and education where it is necessary to supplement the support provided by the father and mother or, if both have died, to replace it.

237. The tutor to the person shall agree with the tutor to property as to the amount he requires each year to pay the expenses 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.

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

239. 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 remains under the management 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.

240. 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.

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 patrimony and, generally, the exercise 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. The tutorship council is composed of three persons or, at the decision of the court or on the motion of the father and mother, only one person.

244. Any interested person may initiate the constitution of a tutorship council by convening a meeting of relatives, relatives by marriage and 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, relatives by marriage or 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, on a motion or of its own initiative, rule that the tutorship council will be composed of only one person designated by it where, owing to the dispersal, indifference or major impediment

of the family members or to the personal situation of the minor or that of his family, it would be unadvisable to constitute a council composed of three persons.

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. The father and mother of the minor, his brothers and sisters of full age and his other ascendants shall, except for a grave reason, be called to the meeting of relatives, relatives by marriage or friends called to constitute a tutorship council.

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

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

249. 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.

250. The meeting shall apppoint the three members of the council 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 otherwise, a secretary responsible for taking and keeping the minutes of the deliberations of the council; it shall fix the secretary's remuneration if necessary.

251. 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 or a relative by marriage in the same line or, if none, a relative or a relative by marriage in the other line or a friend.

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

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

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

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

254. The tutorship council shall give advice and make decisions in every case provided for 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 must 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 makes an inventory of the property of the minor and that he furnishes and maintains a security.

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

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

260. The council composed of three 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 to the minor after the tutorship is instituted.

A copy of the inventory shall be sent to the public curator and to the tutorship council.

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

§ 2.—*Security*

265. The tutor shall, if the value of the property to be administered exceeds $7 000, take out liability insurance or furnish other 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.

The tutorship is responsible for the costs of the security.

266. 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 equal value for the duration of his charge and furnish proof of it every year.

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

268. 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*

269. 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.

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

271. At the end of his administration the tutor shall give a final account to the minor become of full age; he shall also give an account to the tutor who replaces him and to the minor if he has attained fourteen years of age or, where such is the case, to the liquidator of the succession of the minor. He shall send a copy of his final account to the tutorship council and to the public curator.

272. 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.

273. 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

274. A dative tutor may, for a valid reason, 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.

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

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

276. 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 his replacement without having to justify it for any reason other than the interest of the minor.

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

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

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

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

CHAPTER III

PROTECTIVE SUPERVISION OF PERSONS OF FULL AGE

SECTION I

GENERAL PROVISIONS

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

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

281. Every decision relating to the institution of protective supervision or 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.

282. 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, deficiency 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.

283. 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 person of full age and with the advisability of instituting protective supervision for him.

284. Where the report contemplated in articles 29 and 283 is filed in court, the prothonotary shall so inform the person of full age, his spouse, his known close relatives and relatives by marriage, the public curator, any other interested person and, where such is the case, the attorney of the person of full age.

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

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

286. The curator or the tutor to a protected person of full age is responsible for his custody and maintenance; he is also responsible for ensuring the moral and physical well-being of the protected person, taking into account his condition, needs and faculties and his other circumstances.

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

287. 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.

288. The public curator has the simple administration of the property of a protected person of full age even when acting as curator.

289. The public curator does not have custody of the protected person of full age to whom he is appointed tutor or curator unless, where no other person can assume it, the court entrusts it to him.

He remains nevertheless responsible for protection of the person where the latter is entrusted to the custody of another person. The other person, however, shall exercise the power of a tutor or curator to give consent to ordinary health care.

290. 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 shall, to the extent he indicates, delegate the exercise of the custody to a person designated in accordance with the Acts relating to public curatorship, provided that the designated person is not employed by the establishment and has no duties therewith. He may, in particular, authorize the designated person to give consent to the ordinary care required by the state of health of the person of full age.

291. At least once a year, the designated person 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 designated person and the person of full age, revoke the delegation.

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

These rules, except those pertaining to the administration of tutors, also apply to curatorship to persons of full age.

SECTION II

INSTITUTION OF PROTECTIVE SUPERVISION

293. 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.

294. The person of full age himself, his spouse, his close relatives and relatives 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.

295. 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.

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

297. An act under which the person of full age has entrusted another person with the administration of his property continues to be executed notwithstanding the proceedings unless it is revoked by the court for serious reason.

If no mandate has been given by the person of full age or by the court under article 476, the rules provided in respect of the management of the business of another are observed and the public curator and any other person who is qualified to apply for the institution of protective supervision may, in an emergency, perform the acts required to preserve the patrimony.

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

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 act shall be authorized by the court. Even in such a case, except for a compelling reason, 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 grave reason, shall, in establishing protective supervision, take into account the expression of that will.

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

Unless the court fixes an earlier date, the judgment shall be reviewed after three years in the case of a tutorship or the appointment of an adviser or after 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 disability 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 made 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 inability 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 disability 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 inability 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. The rules pertaining to the exercise of the civil rights of a minor apply, adapted as required, to a person of full age under tutorship.

311. The court may, on the institution of the tutorship or subsequently, increase or limit the capacity of the person of full age under tutorship 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, or those that he cannot perform unless he is represented.

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

313. 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 disability was notorious or known to the other party at the time the acts were performed.

SECTION V

ADVISER TO THE PERSON OF FULL AGE

314. The court shall appoint an adviser to a person of full age who, although generally and habitually able to care for himself and administer his property, requires, for certain acts or for a certain time, to be assisted or advised in the administration of his property.

315. 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.

316. 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 a minor who has been granted simple emancipation.

317. Acts performed alone by a person of full age for which 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

318. 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 disability.

319. 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.

320. Where an act is annulled following an application by the protected person of full age or 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.

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

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

TITLE FIVE

LEGAL PERSONS

CHAPTER I

LEGAL PERSONALITY

SECTION I

CONSTITUTION AND KINDS OF LEGAL PERSONS

322. Legal persons are endowed with juridical personality.

Legal persons are of public right or of private right.

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

Legal persons exist from the coming into force of the Act or from the time prescribed therein if they are of public right or constituted directly by law or through the effect of law; otherwise, they exist from the time of their registration in the registry of associations and enterprises.

324. Unless otherwise provided by law, the status of legal person is conferred on an association, company, partnership or other group of private right only by registration in the registry of associations and enterprises.

325. Legal persons of public right are primarily governed by the special Acts by which they are constituted and by those 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 status as legal persons, their property or their relations with other persons.

326. Legal persons of private right shall assume the juridical forms required by law to confer legal personality; they are mainly divided

into associations and companies or partnerships, and generally comprise several members.

Legal persons of private right are primarily governed by the special 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 status as legal persons, their property or their relations with other persons.

327. The object of an association is generally to meet the needs of its members or of third persons through the combination of property, knowledge and activities. Its essential object is not usually profit-making, the sharing of profits among its members nor the carrying on of an enterprise.

328. The object of a company or partnership is generally 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

EFFECTS OF JURIDICAL PERSONALITY

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

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

331. 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.

332. No legal person may exercise tutorship or curatorship to the person; 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.

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

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

334. A legal person may engage in an activity or identify itself under a name other than its own name. It shall file a notice to that effect in the registry of associations and enterprises.

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

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

337. 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.

338. The functioning, the administration of the patrimony and the activities of a legal person are regulated by law and by its articles, which comprise the constituting document and the by-laws; to the extent permitted by law, they may also by regulated by a unanimous agreement of the shareholders.

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

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

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

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

342. A legal person exists in perpetuity unless otherwise provided by law or its articles.

343. 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.

344. 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.

In assessing liability, the court shall take account of the participation of the founders, directors, senior officers or members in the alleged act, or of the personal profit they derived therefrom.

345. In no case may a legal person set up juridical personality against a third person in good faith in order to, among other things, dissemble fraud or an abuse of right.

346. 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.

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

SECTION III

REGISTRATION OF LEGAL PERSONS

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

349. 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, in the case of a company or partnership formed under this Code, the names of the members.

350. Where the declaration of constitution as a legal person is incomplete, inaccurate or irregular, a legal person assuming a juridical form governed by other titles of this Code or one of its members may file a regularizing document in the registry if the insertion or rectification does not infringe upon the rights of the members or of third persons.

351. A regularizing document that infringes upon the rights of the members or of third persons has no effect in their regard without their consent unless the court, after hearing the interested persons and, if necessary, amending the proposed document, has ordered that it be filed in the registry.

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

353. 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.

354. 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 DIRECTORS

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

356. 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.

357. 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.

358. 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 he may set up against it, indicating their nature and 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.

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

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

360. 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, annnul the act or order the director to render account and to remit to the legal person the profit or benefit realized.

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

361. 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.

362. The acts of a director or of a senior officer cannot be annulled on the sole ground that he was unqualified or that his designation was irregular.

363. 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 violated the Acts relating to legal persons or failed to fulfil his obligations as a director.

364. 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.

SECTION V

JUDICIAL CONFERMENT OF PERSONALITY

365. 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.

366. 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.

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

A 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 CERTAIN LEGAL PERSONS

368. This chapter applies to legal persons assuming a juridical form governed by other titles of this Code, except where otherwise provided by their articles.

SECTION I

FUNCTIONING OF LEGAL PERSONS

§ 1.—*Administration*

369. 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 the exercise of 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.

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

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

372. 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 reason for not letting his dissent be known in due time, be exonerated of his liability.

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

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

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

375. 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.

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; until proof to the contrary, the copies are proof of their contents without any requirement to prove the signature affixed to them or the authority of the author.

§ 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 period.

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 period 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 an annual or special general meeting, stating in a written requisition the business to be transacted at the meeting.

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

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 general meetings*

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 for any other cause provided for by the constituting document or by law.

It is also dissolved where the court confirms 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 liable 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. The appointment and revocation may be set up against third persons from the filing of the 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 rights 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 for seven years from the end of liquidation.

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. The filing of the notice cancels the registration of the legal person."

C.C.Q., aa. 660-1411, added

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 opens 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 patrimony.

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 die and it is impossible to determine which survived the other, they are deemed to have died at the same time if at least one of them is called to the succession of the other.

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

CHAPTER II

QUALIFICATION FOR SUCCESSION

664. Natural persons who exist at the time the succession opens, including absentees presumed to be alive at that time and children conceived but yet unborn, if they are born alive and viable, 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 to be 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 toward the deceased or of a grave delict against him;

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 conferred a benefit on him 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 in good faith of the deceased inherits if the marriage is declared null after the death.

TITLE TWO

CERTAIN 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 patrimony of the deceased, subject to the provisions on the liquidation of successions.

The heirs are not, unless by way of exception provided for in this title, bound by the obligations of the deceased to a greater extent than the value of the property they receive, and they retain their right to demand payment of their claims from the succession.

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

674. An apparent heir 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 apparent heir shall restore what remains of the price received from its alienation and the property acquired through reinvestment of that price.

675. An apparent heir in bad faith is responsible for loss or deterioration of the property, even if it results from a fortuitous event or irresistible force.

He is bound to restore to the true heir the value, at the time of the alienation or at the time of the restoration, whichever is higher, of the property that has been alienated.

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

677. Acts of administration performed by an apparent heir 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 apparent heir to the benefit of a third person in good faith may be set up against the true heir. Those by gratuitous title cannot be set up, subject to the rules on prescription.

679. Obligations of the deceased discharged by the apparent heirs 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 apparent heir 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. However, a successor called to the succession in several ways, such as where he is called to receive different kinds of legacies or separate legacies of the same kind, has a separate right of option for each.

682. A successor has six months from the day his right arises to deliberate and exercise his option. The period is extended of right by as many days as necessary to afford him sixty days from 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 arose, 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 formally assumes the name or quality of heir; 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, entails 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. The transfer by a person of his rights in a succession by gratuitous or onerous title entails acceptance.

The same rule applies to renunciation in favour of one or more 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 of the succession 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 arose, 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 at that time and subject 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 arose 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, if it is damaging to him, apply to the court to declare that the renunciation cannot be set up against him, and accept the succession in lieu of his debtor.

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.

TITLE THREE

LEGAL DEVOLUTION OF SUCCESSION

CHAPTER I

HEIRSHIP

703. 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.

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

CHAPTER II

RELATIONSHIP

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

706. 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.

707. 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.

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

709. 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

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

711. 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.

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

713. 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.

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

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

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

CHAPTER IV

ORDER OF DEVOLUTION OF SUCCESSION

SECTION I

DEVOLUTION TO THE SURVIVING SPOUSE AND TO DESCENDANTS

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

The spouse takes one-half of the succession and the descendants, the other half.

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

718. 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.

719. 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

720. 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.

721. Where there are neither descendants, privileged ascendants nor privileged collaterals, the entire succession devolves to the surviving spouse.

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

723. 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.

724. 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.

725. 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.

Where the privileged collaterals inherit, they share equally or by roots, as the case may be.

SECTION III

DEVOLUTION TO ORDINARY ASCENDANTS AND COLLATERALS

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

727. 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.

728. 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.

729. 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 collaterals descended from that ascendant.

730. Where in one line there are no ordinary collaterals descended from the ascendants in the second degree, the share allotted to that line devolves to the ascendants in the third degree or, if there are none,

to the closest ordinary collaterals descended from them, and so on until no relatives within the degrees of succession remain.

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

732. Relatives beyond the seventh degree do not inherit.

CHAPTER V

DEVOLUTION TO THE STATE

733. 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.

734. 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 its opening.

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.

735. 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.

736. 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.

737. 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 its opening or, again, if an action to bring a petition of inheritance has been served on the public curator during that time, until the action is decided.

738. 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

739. 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.

740. 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.

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

742. 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

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

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

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

746. 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.

747. 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

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

749. The formalities governing the various kinds of wills shall be observed on pain of 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.

750. A will that would be null by reason of inobservance of a formality may be upheld as a will made in the presence of witnesses or as a holograph will if it meets the essential requirements thereof and if the court is convinced, after hearing the interested parties, that the writing unquestionably and unequivocally contains the last wishes of the deceased.

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

SECTION II

NOTARIAL WILLS

752. 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.

753. 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 witness or witnesses and the notary.

754. 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 reason for their observance shall be mentioned in the instrument.

755. 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.

756. 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.

757. The notarial 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.

If the testator is deaf-mute, the declaration shall be read to him by the notary in the presence of the witness; if he is deaf, it shall be

read aloud by the testator himself, in the presence of the notary and the witness.

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

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

760. 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.

761. 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

762. 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

763. 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.

764. 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.

765. 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.

766. 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

767. Legacies are of three kinds: universal, general and particular.

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

769. A general legacy 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 all the immovable or movable property, private property or acquests or corporeal or incorporeal property.

770. All other legacies are particular legacies.

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

772. 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 designated by law.

773. 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, general legacies or particular legacies.

Sufficient expression, by the testator, of a different intention takes precedence over the rules referred to in the first paragraph and the meaning ascribed to certain terms.

SECTION II

LEGATEES

774. A universal legatee or general legatee is the heir upon the opening of the succession, provided he accepts the legacy.

775. 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 not bound by the obligations of the deceased relating to the property of the bequest unless the other property of the succession is insufficient to pay the debts, in which case he is liable only up to the value of the property he takes.

776. 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 particular co-legatee unworthy.

777. 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.

778. The provisions of this Code respecting the respective rights and obligations of the apparent heir 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

779. 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.

780. 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.

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

782. 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.

783. 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.

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

785. Representation takes place in testamentary successions in the same manner and in favour of the same persons as in intestate successions where the legacy is made to all the descendants or collaterals of the testator who would have been called to his succession had he died intestate, unless representation 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 provided.

SECTION IV

LAPSE AND NULLITY OF LEGACIES

786. 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.

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

If the loss of the property occurs at the death of the testator, at the opening of the bequest or subsequently, the insurance indemnity is substituted for the destroyed property.

788. Where a legacy charged with another legacy lapses from a cause depending on the legatee, the legacy imposed as a charge also lapses, unless the heir or legatee called to take what was the object of the bequest under the lapsed legacy is able to execute the charge.

789. 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.

790. 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.

791. 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.

792. 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 co-legatee's share of the bequeathed property or has allotted the co-legatees equal aliquot shares.

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

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

Thus, a testamentary disposition limiting the rights of the surviving spouse in the event of remarriage is deemed null.

795. 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 null.

The same is true of an exheredation taking the form of a penal clause intended for the same purpose.

796. A legacy made to the notary before whom a will is executed is null 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.

797. A legacy made to a witness, even a supernumerary, is null, 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.

798. A legacy made to the owner, a director or an employee of a health or social services establishment who is neither the spouse nor a close relative of the testator is null if it was made while the testator was sheltered or taken in charge by the establishment.

The same is true of a legacy made to a member of a foster family while the testator was sheltered by the family.

799. A bequest of property of others 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.

800. If, owing to circumstances unforeseeable at the time of the acceptance of the legacy, the execution of a charge becomes impossible or too burdensome for the heir or the 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

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

802. 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.

803. A legacy made to the spouse before divorce is revoked unless the testator manifested, by means of testamentary dispositions, the intention of benefitting the spouse despite that possibility.

Revocation of the legacy entails revocation of the designation of the spouse as liquidator of the succession.

The same rules apply if the marriage is declared null during the lifetime of the spouses.

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

A revocation that does not specifically refer to the revoked instrument is nonetheless express.

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

806. 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.

807. 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.

808. 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 returned into the patrimony of the testator, unless contrary intention is proved.

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

809. 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

810. 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.

811. No person having acknowledged a will may thereafter contest its validity, although he may bring a demand to probate it.

812. In the case of contestation of an already probated will, the burden is on the person who avails himself of the will to prove its origin and regularity.

813. 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 summoned and the proof of its contents, origin and regularity must be certain and unequivocal.

814. Proof by testimony of a will that cannot be produced is admissible if the will has been lost or destroyed, or is in the possession of a third person, without the collusion of the person who wishes to avail himself of the will.

TITLE FIVE

LIQUIDATION OF SUCCESSIONS

CHAPTER I

OBJECT OF LIQUIDATION AND SEPARATION OF PATRIMONIES

815. The liquidation of an intestate or testate succession consists in identifying and calling in the successors, determining the content of the succession, recovering the claims, paying the debts of the succession, whether these be debts of the deceased or charges on the succession, paying the particular legacies, rendering an account and delivering the property.

816. 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.

817. The testator may modify the seizin, 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 powers or obligations of the liquidator in such a manner as to prevent an act necessary for liquidation or to exempt him from making an inventory is null.

818. The patrimony of the deceased is separate from that of the heir by operation of law until the succession has been liquidated.

The separation operates in respect of both the creditors of the succession and the creditors of the heir or particular legatee.

819. 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.

820. 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

821. Any person fully capable of exercising his civil rights may hold the office of liquidator.

A legal person authorized by law to administer the property of others may hold the office of liquidator.

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

823. The office of liquidator devolves as of right to the heirs unless otherwise provided by a testamentary disposition; the heirs may designate the liquidator by a majority vote and provide his mode of replacement.

824. A testator may designate one or several liquidators; he may also provide their 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.

825. 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.

826. 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.

827. The liquidator is entitled to the reimbursement of the expenses incurred in fulfilling his office.

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.

828. 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.

829. 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.

830. 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.

831. During proceedings, the liquidator continues to hold office unless the court decides to designate an acting liquidator.

832. 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.

833. 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

834. The liquidator shall make an inventory in the manner prescribed in the title on the administration of the property of others.

835. 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.

836. The liquidator shall notify the heirs, the successors who have not yet exercised 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.

837. 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.

838. 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.

839. 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.

840. 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.

841. 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

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

843. The liquidator shall make a search to ascertain whether the deceased made a will.

The liquidator shall cause the will to be probated and register it, where required; he shall take all the necessary steps to execute it.

844. 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.

845. A liquidator who alienates property other than perishable movable property shall proceed according to the Code of Civil Procedure unless he obtains the consent of all the heirs. In no case may a liquidator alienate immovable property, except in case of need or obvious advantage, without such consent.

The heirs, by reason of their consent, may be held liable for the debts of the succession beyond the value of the property they take.

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

847. If the liquidation takes longer than one year, the liquidator 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.

848. 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 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

849. 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.

850. 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 patrimony of the deceased.

Failing agreement between the heirs and the surviving spouse, the liquidator shall pay the allowance awarded by the court.

851. 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.

852. 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.

853. Where the property of the succession is insufficient, the liquidator, in accordance with his payment proposal, shall first pay the hypothecary or preferred creditors, in their order of preference; next, he shall pay the other creditors, and if he is unable to repay them fully, shall pay them *pro rata* to their claims.

If property remains after the creditors have been paid, the liquidator shall pay the particular legatees.

854. The liquidator may alienate property bequeathed as particular legacies or reduce the particular legacies if the other property of the succession is insufficient to pay all the debts.

The alienation or reduction is effected in the order and in the proportions to which the legatees agree among themselves. Failing agreement, the liquidator shall first reduce the legacies not having preference under the will nor involving a thing certain and determined, *pro rata* to their value; where the property is still insufficient, he shall reduce or alienate the legacies of things certain and determined, then the legacies having preference, *pro rata* to their value.

The legatees may always agree to another mode of settlement or be relieved by giving back their legacies or equivalent value.

855. If the property of the succession is insufficient to pay all the particular legatees, the liquidator, in accordance with his payment proposal, shall first pay 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.

SECTION II

PAYMENTS MADE BY THE HEIRS AND PARTICULAR LEGATEES

856. 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 subsidiary right of action against the other creditors in proportion to their claims, taking account of causes of preference.

857. Creditors and particular legatees who, remaining unknown, do not present themselves until after the payments have been regularly made have no right of action against the heirs and against the particular legatees paid to their detriment unless they prove that they had serious reasons for not presenting themselves in due time.

In no case do they have a right of action if they present themselves after the expiry of three years from the discharge of the liquidator, or any preference over the personal creditors of the heirs or legatees.

858. 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 subsidiary right against the other creditors, in proportion to their claims, taking account of causes of preference.

859. 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.

860. 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.

861. A general legatee 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 hypothecarily when the immovable he has received is charged with a hypothec.

The relative contributions of the general legatee of the usufruct and of the bare owner are established according to the rules prescribed in the book on property.

862. A general legatee 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.

863. 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.

864. 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.

865. 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 subsidiary right of action of the creditors against the heirs and particular legatees where the property of the universality is insufficient.

866. 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.

867. 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.

868. 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 charged property.

869. 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 co-partitioners, unless the instrument of partition stipulates otherwise.

870. 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 cannot be set up 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 co-partitioners.

871. 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.

872. An heir having assumed payment of the debts of the succession or who is liable for them 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

873. 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.

874. 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 security 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.

875. 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.

876. 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

877. 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.

878. 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 carry out his intentions fully, the powers and obligations of the liquidator must continue to be held under another title.

879. 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.

880. 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.

881. Notwithstanding an application for partition, undivided ownership may be continued of a family enterprise that had been operated by the deceased or of the stocks, shares or other securities related to the enterprise where the deceased was the principal partner or shareholder.

882. Undivided ownership may also be continued of the principal family residence or of movable property appropriated for the use of the household, even where a right of ownership, usufruct or use is awarded to the surviving spouse.

883. Any heir who before the death actively participated in the operation of the family enterprise or lived in the principal family residence may make an application to the court to continue undivided ownership.

884. When deciding an application for the continuance 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; in all cases, the agreements among the partners or shareholders to which the deceased was a party shall be respected.

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

886. Continuance of undivided ownership takes place under the conditions fixed by the court but shall not be granted for a duration of more than five years except with the agreement of all the interested persons.

It may be renewed until the death of the spouse or until the majority of the youngest child of the deceased.

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

888. If an application for the continuance of undivided ownership contemplates a particular item of property or a group of properties, nothing prevents proceeding to partition of the residue of the property of the succession. Furthermore, the heirs may always satisfy an heir who objects to the continuance of undivided ownership by paying his share themselves or granting him, after appraisal, certain other property of the succession.

889. 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.

890. 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 the time of the redemption and his disbursements for costs related to the transfer.

CHAPTER II

MODES OF PARTITION

SECTION I

COMPOSITION OF SHARES

891. 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.

892. If the undivided shares are equal, as many shares shall be composed as there are heirs or partitioning roots.

If the undivided shares are unequal, as many shares as necessary to allow a drawing of lots shall be composed.

893. 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.

894. 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.

895. 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 terms and conditions of sale.

896. Failing agreement among the undivided owners on the composition of the shares, they shall be made up by an expert designated by the court; if the disagreement has to do with the allotment of the shares, it is made by a drawing of lots.

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

SECTION II

PREFERENTIAL ALLOTMENTS AND CONTESTATION

897. 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.

898. The surviving spouse may, in preference to any other heir, require that the principal family residence and the household furniture used by the family be placed in his share.

If the value of the property exceeds the share due to the spouse, he shall keep the property, subject to a balance.

899. 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.

900. Notwithstanding any objection or application for an allotment by preference presented by another co-partitioner, the enterprise or the capital shares, stocks or other securities connected with the enterprise are allotted by preference to the heir who was actively participating in the operation of the enterprise at the time of the death.

901. 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 or, if the allotment of the residence, of the enterprise or of the securities connected with the enterprise is in question, by the court. In the latter case, account is taken of, among

other things, the interest involved, the reasons for the preference of each party and his degree of participation in the enterprise or in the maintenance of the residence.

902. Where the contestation among the co-partitioners 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.

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

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

905. 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.

906. 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

907. 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 co-partitioners in this matter at their request. Failing agreement on the choice, it is made by a drawing of lots.

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

CHAPTER III

RETURN

SECTION I

RETURN OF GIFTS AND LEGACIES

909. 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.

910. 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.

Return is due even if the representative has renounced the inheritance of the person represented.

911. 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.

912. Return is made by taking less.

Any stipulation requiring the heir to make return in kind is null. However, the heir may elect to make the return in kind if he still owns the property, unless he has charged it with a usufruct, servitude, hypothec or other real right.

913. 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.

914. Return by taking less may also be made by debiting the cash value of the property received to the share of the heir.

915. 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.

916. The value of property returned by taking less or in kind shall be reduced by the increase in value of the property resulting from the expenditures or personal initiative of the person returning.

It is also reduced by the amount of the necessary expenses.

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

917. The heir is entitled to retain the property that must be returned in kind until he has been reimbursed the amounts he is owed.

918. An heir is bound to return property the loss of which results from his actions; he is not bound to do so if the loss results from a fortuitous event.

In either case, he shall return any compensation paid to him for the loss of the property.

919. The co-partitioners 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.

920. 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

921. An heir coming to a partition shall return to the mass the debts he owes to the deceased; he shall also return the amounts he owes to his co-partitioners by reason of the undivided ownership.

The debts are subject to return even if they are not due when partition takes place; they are not subject to return if the testator provided a release therefrom to take effect at the opening of the succession.

922. 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 terms and conditions attached to the debt.

923. 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.

924. 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.

925. 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 arose if it arose after the death.

CHAPTER IV

EFFECTS OF PARTITION

SECTION I

THE DECLARATORY EFFECT OF PARTITION

926. Partition is declaratory of ownership.

Each co-partitioner is deemed to have inherited, alone and directly, all the property included in his share or which devolves to him through 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.

927. Any act the object of which is to terminate undivided ownership between co-partitioners constitutes partition, even though the act is described as a sale, an exchange, a transaction or otherwise.

928. 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 and real rights granted by him in property which has not been allotted to him cannot be set up against any other undivided heirs who have not consented to them.

929. Acts validly made during undivided ownership resulting from death retain their effect, regardless of which heir receives the property at partition.

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

930. 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 CO-PARTITIONERS

931. Co-partitioners are warrantors towards each other only for the disturbances and evictions arising from a cause prior to the partition.

Notwithstanding the first paragraph, each co-partitioner remains a warrantor for any eviction caused by his personal act.

932. The insolvency of the debtor of a claim devolving to one of the co-partitioners gives rise to warranty in the same manner as an eviction, if the insolvency occurred prior to partition.

933. The warranty does not occur if the eviction incurred has been excepted by a stipulation in the deed of partition; it terminates if the co-partitioner suffers eviction through his own fault.

934. Each co-partitioner is personally bound, in proportion to his share, to indemnify his co-partitioner for the loss which the eviction has caused him.

The loss is appraised at its value on the day of the partition.

935. If one of the co-partitioners is insolvent, the share for which he is liable shall be divided proportionately among the warrantee and all the solvent co-partitioners.

936. The action in warranty is prescribed by three years running from eviction or discovery of the disturbance or from partition if it is caused by the insolvency of a debtor of the succession.

CHAPTER V

NULLITY OF PARTITION

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

Notwithstanding the foregoing, a supplementary or corrective partition may be effected in any case where it is to the advantage of the co-partitioners to do so.

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

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

940. 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

941. Property, whether corporeal or incorporeal, is divided into immovables and movables.

942. Land, plants and minerals as long as they are not separated or extracted from the land, and constructions 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.

943. 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.

944. Movables which, without losing their individuality, are placed for a permanency by their owner on his immovable for the service or operation thereof are immovables for as long as they remain there. The same rule applies to movables which are incorporated with the immovable in the same way.

945. Real rights in immovables, as well as actions to assert such rights or to obtain possession of immovables, are immovables.

946. Things which can be moved either by themselves or by an extrinsic force are movables.

947. Claims and other incorporeal rights attested by a bearer instrument, and waves or energy harnessed and put to use by man, whether their source is movable or immovable, are deemed corporeal movables.

948. All other property, if not qualified by law, is movable.

CHAPTER II

PROPERTY IN RELATION TO ITS PROCEEDS

949. Property, according to its relations to other property, may be divided into capital, and fruits and revenues.

950. Property that produces fruits and revenues, property appropriated to the operation of an enterprise, shares of the capital stock or common shares of a legal person, the reinvestment of the fruits and revenues, the price for any disposal of capital or its reinvestment, and expropriation or insurance indemnities in replacement of capital, are capital.

Capital also includes rights of intellectual or industrial property except sums derived therefrom without alienation of the rights, bonds and other loan certificates payable in cash and rights the exercise of which tends to increase capital property, such as the right to subscribe to securities of a legal person or of a trust.

951. Fruits and revenues are that which is produced by property without any alteration to its substance or that which is derived from the use of capital. They also include rights the exercise of which tends to increase the fruits and revenues of the property.

Fruits comprise things spontaneously produced by property or produced by the cultivation or working of land, and the produce and increase of animals.

Revenues comprise sums of money yielded by or derived from property, such as rents, interest, and dividends, except those representing the distribution of the price of alienation of assets of a company; they also comprise sums received by reason of the cancellation or renewal of a lease or of prepayment, or sums allotted or collected in similar circumstances.

CHAPTER III

PROPERTY IN RELATION TO PERSONS HAVING RIGHTS IN IT OR POSSESSION OF IT

952. 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 patrimony.

953. Certain things such as water and air are not susceptible of appropriation, and their use, common to all, is governed by laws of public interest and, in certain respects, by this Code.

Notwithstanding the foregoing, water and air may be considered to be objects of ownership if they are not intended for public utility and if they are collected in man-made receptacles from which they cannot naturally escape.

954. Certain other things, being ownerless, are not the object of any right, but may nevertheless be appropriated by occupation if the person taking them does so with the intention of becoming their owner.

955. Property belongs to the state or to persons or, in certain cases, is appropriated to a purpose.

Property of the state and property of legal persons of public right is governed by public law and, where the rules thereof require to be complemented, by this Code.

956. Property is acquired by contract, succession, occupation, prescription, accession or any other mode provided by law.

Notwithstanding the first paragraph, no one may appropriate property of the state for oneself by occupation, prescription or accession except property the state has acquired by succession, vacancy or confiscation, so long as it has not been confused with its other property. Similarly, no one may acquire property of legal persons of public right that is appropriated to public utility.

957. Property confiscated under the law is, upon being confiscated, the property of the state or, in certain cases, of the legal person of public right authorized by law to confiscate it.

958. Parts of the territory not owned by natural persons or legal persons nor transferred to a trust patrimony are owned by the state and form part of its domain. The state is presumed to have the original titles to such property.

959. The beds of navigable and floatable lakes and watercourses are, up to the high-water line, property of the state.

The same is true of the beds of non-navigable and non-floatable lakes and watercourses bordering lands alienated by the state after 9 February 1918; before that date, ownership of the riparian land carried with it, upon alienation, the ownership of the beds of non-navigable and non-floatable watercourses.

In any case, the law or the deed of concession may provide otherwise.

960. Any person may travel on watercourses and lakes provided he gains legal access to them, does not encroach on the rights of the riparian owners 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*

961. Possession is the exercise in fact, by a person himself or by another person having detention of the property, of a real right, with the intention of acting as the holder of that right.

The intention is presumed. Where it is lacking, there is merely detention.

962. To produce legal effects, possession must be peaceful, continuous, public and unequivocal.

963. A person having begun to detain property on behalf of another or with acknowledgement of a superior domain is presumed to continue to detain it in that quality unless inversion of title is proved on the basis of unequivocal facts.

964. Merely facultative acts or acts of sufferance do not found possession.

965. The present possessor is presumed to have been in continuous possession from the time he came into possession; he may join his possession and that of his predecessors.

Possession is continuous even if its exercise is temporarily prevented or interrupted.

966. Defective possession begins to produce effects only from the time the defect ceases.

Successors by whatever title do not suffer from defects in the possession of their predecessor.

967. 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*

968. 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.

969. Possession vests the possessor with the real right he is exercising if he complies with the rules on prescription.

970. A possessor in good faith need not render account of the fruits and revenues of the property, and he bears the costs he incurred to produce them.

A possessor in bad faith shall, after compensating for the costs, return the fruits and revenues from the time he began to be in bad faith.

971. 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.

972. A possessor may be reimbursed or indemnified according to the rules under the heading of accession for the constructions, plantations and works he has made.

SECTION II

ACQUISITION OF VACANT PROPERTY

§ 1.—*Ownerless property*

973. 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 are left in a public place, including a public road or a vehicle used for public transportation, are deemed abandoned.

974. An ownerless movable belongs to the person who appropriates it for himself by occupation.

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.

975. An ownerless immovable belongs 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.

976. Ownerless property which the state appropriates for itself is administered by the public curator, who shall dispose of it according to law.

977. 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*

978. 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 occupation, but is susceptible of prescription, as is the price subrogated thereto.

979. The finder of property shall attempt to find its owner; if he finds him, he shall return it to him.

980. 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.

981. The holder of found property, including the state or a municipality, may sell it if it is not claimed within sixty 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 locality 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. Also, if there is no bidder at the auction, he may sell the property by agreement, give it to a charitable institution or, if it is impossible to dispose of it in this way, destroy it.

982. The state or a municipality may sell movable property in its hands at auction, in the manner of the holder of found 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.

983. 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 considered forgotten.

984. 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.

985. 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.

986. 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 what is left of the price of sale.

TITLE TWO

OWNERSHIP

CHAPTER I

NATURE AND EXTENT OF THE RIGHT OF OWNERSHIP

987. Ownership is the right to use, enjoy and dispose of property fully and freely, subject to the limits and conditions determined by law.

Ownership may be in various modes and dismemberments.

988. 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.

989. The fruits and revenues of property belong to the owner, and he bears the costs he incurred to produce them.

990. The owner of the property assumes the risks of loss and deterioration.

991. Ownership of the soil carries with it ownership of what is above and what is below the surface.

The owner may make such constructions, works or plantations above or below the surface as he sees fit; he is obliged to respect, among other things, the rights of the public in mines, sheets of water and underground streams.

992. No owner may be compelled to transfer his ownership except by expropriation according to law for public utility and in consideration of a just and prior indemnity.

993. 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 encroachment or to any use which he has not authorized or that is not authorized by law.

CHAPTER II

ACCESSION

SECTION I

IMMOVABLE ACCESSION

994. 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*

995. Constructions, works or plantations 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.

996. An owner of an immovable who makes constructions, works or 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.

997. An owner of an immovable acquires ownership of the constructions, works or plantations made on his immovable by a possessor, whether the expenses were necessary, useful or for amenities.

998. The owner shall reimburse the possessor for the necessary expenses, even if the constructions, works or plantations no longer exist.

Notwithstanding the first paragraph, if the possessor is in bad faith, compensation may be claimed for the fruits and revenues collected, after deducting the costs incurred to produce them.

999. The owner shall reimburse the useful expenses made by a possessor in good faith, if the constructions, 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 the useful expenses made by the possessor in bad faith; he may at that time take compensation for the fruits and revenues owed to him by the possessor.

The owner may also compel the possessor in bad faith to remove the constructions, works or plantations and to restore the place to its former condition; if restoration to its former condition is impossible, the owner may keep them without compensation or compel the possessor to remove them.

1000. The owner may compel the possessor to acquire the immovable and to pay him its estimated value if the useful expenses made are costly and extensive in relation to its value.

1001. A possessor in good faith who has made expenses for amenities for himself may, as he elects, either remove the constructions, works or plantations he has made, without being obliged to restore the place to its former condition, or abandon them.

If the possessor abandons them, the owner may either preserve them and reimburse their cost or the increase in value given to the immovable, whichever is less, to the possessor, or remove them at the possessor's expense.

1002. The owner may compel the possessor in bad faith to remove the constructions, works or plantations he has made as amenities for himself and to restore the place to its former condition; if restoration to its former condition is impossible, he may keep them without compensation or compel the possessor to remove them.

1003. A possessor in good faith has a right to retain the immovable until he has been reimbursed for necessary or useful expenses.

A possessor in bad faith has no right under this article except in respect of necessary expenses he has made.

1004. Expenses made by a person having detention are dealt with according to the rules prescribed for expenses 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*

1005. 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.

1006. Accretions left by the imperceptible recession of running water from one bank while it encroaches upon the opposite bank are acquired by the riparian owner on the bank gradually added to, and the riparian owner on the opposite bank has no claim for the lost land.

No right exists under this article with regard to accretions from the sea, which form part of the domain of the state.

1007. 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.

1008. An island formed in the bed of a watercourse belongs to the owner of the bed.

1009. 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.

1010. 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

1011. 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.

1012. 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.

1013. 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.

1014. A person obliged to return a new property may retain it until its owner pays him the compensation he owes him.

1015. In unforeseen circumstances, the 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

1016. The limits of land are determined by the titles, the cadastral documents, and the boundary lines of the land, and by any other useful indication or document, if need be.

1017. Every owner may compel his neighbour to have the boundaries between their contiguous lands determined in order to fix the boundaries, set displaced or missing boundary markers back in place, verify ancient boundary markers or rectify the dividing line between their properties.

Failing agreement between them, the owner shall first 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

1018. 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 land is devoted to agriculture, he carries out drainage works.

1019. 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.

1020. 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.

1021. Unless it is contrary to the public interest, 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 modification of any works that is polluting or drying up the water.

1022. Roofs are required to be built in such a manner that water, snow and ice fall on the owner's land.

SECTION III

TREES

1023. Fruit that falls from a tree onto neighbouring land belongs to the owner of the tree.

1024. 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.

If a tree on the neighbouring property is in danger of falling on the owner's land, he may compel his neighbour to uproot the tree, to cut it down or to right it.

1025. 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 seriously damaging to his operations, except those in an orchard or sugar bush and those kept to embellish the property.

SECTION IV

ACCESS TO AND PROTECTION OF ANOTHER'S LAND

1026. 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 construction, works or plantation on the neighbouring land.

1027. 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.

1028. An owner obliged to give access to his land is entitled to compensation for any damage he incurs as a result of that sole fact and to the restoration of his land to its former condition.

1029. The owner of land shall do such repair or demolition work as is needed to prevent the collapse of a construction or works situated on his land that is in danger of falling onto the neighbouring land, including a public road.

1030. Where the owner of land erects a construction or works or makes a plantation on or in his land, he shall not disturb the neighbouring land or undermine the constructions, works or plantations situated on it.

1031. Where an owner has, in good faith, built beyond the limits of his land on a parcel of land belonging to another, he shall, as the owner of the land he has encroached upon elects, acquire the parcel by paying him 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 constructions and to restore the place to its former condition.

1032. 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

1033. No person may have direct views less than fifteen decimetres from the dividing line.

This rule does not apply in the case of

1. Views on the public thoroughfare or on a public park or in the case of panelled doors or doors with translucid glass;

2. An owner who has made an opening but is, or his assigns are, prevented from seeing by a wall or fence dividing the neighbouring land from his land;

3. An opening which, because of its height, does not look out on any wall of the neighbouring land.

1034. The distance of fifteen decimetres is measured from the exterior facing of the wall where the opening is made and perpendicularly therefrom to the dividing line.

1035. A person may make unopenable translucid lights in a wall that is not a common wall, even if it is less than fifteen decimetres from the dividing line.

1036. A co-owner of a common wall has no right to make any opening in it without the agreement of the other co-owner.

SECTION VI

RIGHT OF WAY

1037. The owner of land enclosed by that of others in such a way that there is no access or only an inadequate, difficult or impassable access to it from the public road may, if all his neighbours refuse to grant him a servitude or another mode of access, require one of them to provide him the necessary right of way to use and exploit his land.

Where an owner claims his right under this article, he shall pay compensation proportionate to the damage he may cause.

1038. Right of way is claimed from the owner whose land affords the most natural way out, taking into consideration the condition of the place, the benefit to the enclosed land, and the inconvenience caused by the right of way to the land on which it is exercised.

1039. If land is enclosed as a result of the division of land pursuant to a partition, will or contract, right of way may be claimed only from a co-partitioner, heir or contracting party, not from the owner whose land affords the most natural way out, and in this case the way is provided without compensation.

1040. The beneficiary of a right of way shall build and maintain all the works necessary to ensure that his right is exercised under conditions that cause the least possible damage to the land on which it is exercised.

1041. Right of way is extinguished when it ceases to be necessary for the use and exploitation of the land. The compensation is not reimbursed, but if it was payable as an annual rent or by instalments, future payments of these are no longer due.

SECTION VII

COMMON FENCES AND WORKS

1042. 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 construct or make one-half of or share the cost of constructing or making on the dividing line a fence to divide his land from his neighbour's land.

1043. 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.

1044. Any owner may cause a private wall that is 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.

1045. 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 works.

1046. The maintenance, repair and rebuilding of a common wall are at the expense of each owner in proportion to his right.

An owner who does not use the common wall may renounce his right and be relieved of his obligation to share the expenses by registering a notice, by deposit, and transmitting a copy of it to the other owners without delay. The notice entails the renunciation of the right to make use of the wall.

1047. 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.

1048. 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

1049. Ownership has two principal special modes, co-ownership and superficies.

1050. 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

1051. Indivision may arise from a contract, succession or judgment or by operation of law.

1052. An indivision agreement that postpones partition of a property shall be set down in writing.

No such agreement may exceed thirty years, but it is renewable. An agreement exceeding thirty years is reduced to that term.

1053. An indivision agreement 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

1054. 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.

1055. 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, he is liable for compensation.

1056. 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.

1057. 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.

1058. Each undivided co-owner is entitled to be reimbursed for necessary expenses he has made to conserve the undivided property. For other expenses, 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.

1059. 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.

1060. In case of an indivision agreement, partition cannot be 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.

1061. Any undivided co-owner, within sixty days of learning that a third person has, by onerous title, acquired the share of an undivided co-owner, may exclude him from the indivision by reimbursing him for the transfer price and the expenses he has paid.

Such right must be exercised within one year of the acquisition of the share.

1062. 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 take it in payment of an obligation, be subrogated to the rights of the creditor by paying him the debt of the undivided co-owner, with costs.

An undivided co-owner not having registered a notice of address has no right of redemption against a creditor or the assigns of the creditor.

1063. 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 right in the undivided property.

SECTION III

ADMINISTRATION OF UNDIVIDED PROPERTY

1064. Undivided co-owners of property administer it jointly.

1065. 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.

1066. The undivided co-owners may appoint one of their number or another person as manager and entrust him with the administration of the undivided property.

The court may designate the manager on the motion of one of the undivided co-owners and determine his responsibilities where a majority in number and shares of the undivided co-owners cannot agree on whom to appoint or where it is impossible to appoint or replace the manager.

1067. 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.

1068. 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

1069. No one is bound to remain in indivision; partition may be demanded at any time unless it has been postponed by agreement, a testamentary disposition, a judgment, or operation of law, or unless it has been made impossible because the property has been appropriated to a durable purpose.

1070. 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.

The undivided co-owners may satisfy those who object to the establishment of divided co-ownership and who refuse to sign the declaration of co-ownership by apportioning their share to them in money; the share of each undivided co-owner is then increased in proportion to his payment.

1071. 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.

1072. If one of the undivided co-owners objects to continuing in indivision, the others may satisfy him at any time by apportioning his share to him in kind, provided it is easily detachable from the rest of the undivided property, or in money, as he chooses.

If the share is apportioned in kind, the undivided co-owners may make the allotment least prejudicial to the exercise of their rights.

If the share is apportioned in money, the share of each undivided co-owner is increased in proportion to his payment.

1073. If the undivided co-owners fail to agree on the share in kind or in money to be apportioned to one of them, an expert appraisal or evaluation shall be made by a person designated by all the undivided co-owners or, if they cannot agree among themselves, by the court.

1074. 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 undivided co-owner could demand it himself. A creditor may, however, seize and sell his debtor's share.

1075. 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.

1076. Indivision ends by the partition or alienation of the property.

In the case of partition, the provisions relating to the partition of successions apply, adapted as required.

CHAPTER III

DIVIDED CO-OWNERSHIP OF IMMOVABLES

SECTION I

ESTABLISHMENT OF DIVIDED CO-OWNERSHIP

1077. 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.

1078. The co-owners as a body constitute, upon the registration of the declaration of co-ownership, a legal person, the objects of which are to preserve the immovable, to maintain and manage the common parts, to protect the rights appurtenant to the immovable or the co-ownership and to take all measures of common interest.

The legal person shall be called a syndicate.

1079. Divided co-ownership may be established of an immovable that is the object of an emphyteutic lease or superficies 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 divisible obligations of the emphyteutic lessee or superficiary, as the case may be, towards the owner of the immovable. The syndicate assumes the indivisible obligations.

SECTION II

FRACTIONS OF CO-OWNERSHIP

1080. 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.

1081. 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.

1082. 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 appropriated to the use of one or more of the co-owners. The rules regarding the common parts apply to such common parts for restricted use.

1083. The following are presumed 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, basements, foundations and main walls of buildings, and common equipment and apparatus, such as the central heating and air-conditioning systems and the piping and wiring, including what crosses exclusive parts.

1084. 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.

1085. 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.

1086. 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.

1087. 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.

1088. Alienation of a divided part of a fraction is null and not open to registration unless the declaration of co-ownership and the cadastral plan have been altered prior to the alienation so as to create a new fraction, describe it, give it a separate cadastral number and determine its relative value, or to record the alterations made to the boundaries between contiguous exclusive parts.

1089. 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.

1090. Notwithstanding articles 1983 and 2017 of the Civil Code of Lower Canada, a hypothec, any additional security accessory thereto or any privileges existing, at the time of registration of the declaration of co-ownership, on the whole of an immovable held in co-ownership are divided among the fractions according to the relative value of each or according to any other established proportion.

Notwithstanding the foregoing, they may remain undivided with regard to the group of fractions held by the promoter of the co-ownership.

SECTION III

DECLARATION OF CO-OWNERSHIP

§ 1.—*Content of the declaration*

1091. A declaration of co-ownership comprises the deed constituting the co-ownership, the by-laws of the immovable and a description of the fractions.

1092. A deed of co-ownership 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 and shall provide 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.

1093. 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 shall also deal with the procedure of assessment and collection of contributions to the common expenses.

1094. A description shall contain the cadastral description of the exclusive parts and common parts of the immovable.

A description shall also contain a description of the real rights affecting or existing in favour of the immovable other than hypothecs, additional security accessory thereto and privileges.

1095. 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 carrying out of work 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.

1096. The by-laws of the immovable may be set up against the lessee or occupant of a fraction upon his being given a copy of the by-laws or the amendments to them by the co-owner or, failing him, by the syndicate.

1097. 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 right of enjoyment 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*

1098. A declaration of co-ownership, and any amendments, shall be in the form of a notarial deed *en minute*.

The declaration shall be signed by all the owners of the immovable and by the emphyteutic lessee or the superficiary, if any; amendments shall be signed by the syndicate.

1099. 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.

1100. 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.

1101. A declaration of co-ownership may be set up against the co-owners and their assigns and against the persons who signed it from the time of its registration.

1102. Unless, at the time of registration, a declaration of co-ownership is accompagnied with the written consent of all the holders of privileges, hypothecs or other security registered against the immovable, it cannot be set up against them.

SECTION IV

RIGHTS AND OBLIGATIONS OF CO-OWNERS

1103. 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.

1104. 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 shall contribute to the costs resulting from those parts.

1105. A co-owner who gives a lease on his fraction shall notify the syndicate and give the lessee's name.

1106. No co-owner may interfere with the carrying out, 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.

1107. A co-owner who suffers prejudice by the carrying out of work, because of a permanent diminution in the value of his fraction, a grave disturbance, although temporary, of enjoyment or because of 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.

1108. 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 relative value of the fractions and of the apportionment of the common expenses.

The right to apply for a revision may be exercised only if there exists, between the relative value attributed to a fraction or the share of common expenses attached thereto and the value or share that should have been determined, according to the criteria provided in the

declaration of co-ownership, a difference in excess of one-tenth either in favour of another co-owner or to the prejudice of the applicant co-owner.

SECTION V

RIGHTS AND OBLIGATIONS OF THE SYNDICATE

1109. 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, a copy of the cadastral plan, the plans and specifications of any immovable constructed and all other documents regarding the immovable and the syndicate.

1110. 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.

1111. 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.

1112. 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.

1113. Non-observance of a condition of the insurance contract by a co-owner cannot be set up against the syndicate.

1114. The indemnity owing to the syndicate following a large 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 the indemnity 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.

1115. 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 that the fraction is acquired by the syndicate, but the syndicate has no vote for that part at the general meeting and the total number of votes that may be given is reduced accordingly.

1116. 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, without prejudice to any other recourse.

1117. 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.

1118. The syndicate may demand the resiliation of the lease of a fraction, after notifying the lessor, where the inexecution of an obligation by the lessee causes serious prejudice to a co-owner or to another occupant of the immovable.

1119. 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 the other penalties it may impose, 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.

1120. The syndicate has a privilege 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 thirty days overdue.

Registration of a notice of the privilege preserves preference for the expenses and debts of the current financial year.

The syndicate may grant release of the privilege.

1121. The syndicate may institute any action on the grounds of latent defects or defects of construction of the immovable or defects in the ground. In a case where the defects 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 latent defects, 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.

1122. The syndicate, within six months of learning that a person has acquired the rights of the owner of an immovable that is subject to an emphyteutic lease or to 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 become common or exclusive parts, as the case may be, and the co-owners' right ceases to be of a temporary nature.

1123. 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

BOARD OF DIRECTORS OF THE SYNDICATE

1124. 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.

1125. The day-to-day administration of the syndicate may be entrusted to a manager chosen from among the co-owners or otherwise.

The manager shall act as the administrator of the property of others charged with simple administration.

1126. A director or the manager may be replaced by the syndicate if, being a co-owner, he neglects to pay his contribution to the common expenses or to the contingency fund.

SECTION VII

THE GENERAL MEETING OF THE CO-OWNERS

1127. 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 period, the statement of debts and claims, the budget forecast, any draft amendment to the declaration of co-ownership and a note on the general terms and conditions of any proposed contract or planned work.

1128. 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 of directors shall give written notice to the co-owners before the meeting of the questions on the agenda.

1129. Co-owners holding a majority of the votes constitute a quorum at general meetings.

If a quorum is not reached, the meeting shall be declared adjourned to a later date, notice of which shall be given to all the co-owners; three-quarters of the members present or represented at the subsequent meeting constitute a quorum.

When there is no longer a quorum at a meeting, the meeting shall, on the motion of a co-owner, be declared adjourned.

1130. 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.

1131. Where, in a co-ownership comprising fewer than five fractions, a co-owner is entitled to more than one-half of all the votes available to the co-owners, the number of votes to which he is entitled at a meeting is reduced to the total number of votes to which the other co-owners present or represented at the meeting are entitled.

1132. No promoter of a co-ownership comprising five or more fractions is entitled, in addition to the voting rights attached to the fraction serving as his residence, to over sixty per cent of all the votes of the co-owners at the end of the second and third years after the date of registration of the declaration of co-ownership.

The limit is subsequently reduced to twenty-five per cent.

1133. 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 considered to be a promoter.

1134. 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.

1135. 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.

1136. Decisions of the syndicate, including a decision to correct an error in writing in the declaration of co-ownership, are taken by a majority of the co-owners present or represented at the meeting.

1137. 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.

1138. 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.

1139. Where the number of votes available to a co-owner or a promoter is reduced by the effect of this section, the total number of votes that may be cast by all the co-owners to decide a question requiring a majority in number and votes is reduced by the same number.

1140. The co-owners of contiguous 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. No alteration may increase or decrease the relative value of the group of exclusive parts altered or the total of the voting rights attached to them.

The syndicate shall amend the declaration of co-ownership and the cadastral plan 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.

1141. Any stipulation of the declaration of co-ownership which changes the number of votes required in this chapter for taking any decision is null.

1142. 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 null.

1143. 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 or if an error was made in counting the votes.

The 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

1144. 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.

1145. The board of directors shall render account of its administration at the special meeting.

It shall produce the financial statements, which shall be accompanied with remarks on the financial situation of the syndicate, provided by an accountant. The accountant, in his report to the co-owners, shall indicate any irregularity that has come to his attention.

The financial statements shall be audited at the request of co-owners representing forty per cent of the voting rights of all the co-owners. The request may be made at any time, even before the meeting.

1146. 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.

1147. The new board of directors may, within sixty days of the election, terminate, without penalty, a contract for the maintenance of the immovable or other services entered into before the election by the syndicate, where the term of the contract exceeds one year.

SECTION IX

TERMINATION OF CO-OWNERSHIP

1148. 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 voting rights 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. The writing shall be registered by deposit and entered in the index of immovables.

In the case of an emphyteutic contract or superficies, the writing shall also be signed by the owner of the immovable and by the emphyteutic lessee or the superficiary.

1149. 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 and obligations of the co-owners in the immovable, in addition to the property of the syndicate.

CHAPTER IV

SUPERFICIES

SECTION I

NATURE OF SUPERFICIES

1150. Superficies is a real immovable right which enables a person, called the superficiary, to be the owner of constructions, 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 object of the right of ownership, the transfer of the right of accession or renunciation of the benefit of accession.

1151. A deed constituting a right of superficies may be set up against third persons only if it has been registered by deposit.

1152. The right of the superficiary to use the subsoil is governed by an agreement. Failing agreement, the subsoil is charged with the servitudes necessary for the exercise of the right. These servitudes are extinguished on the termination of the right.

1153. The superficiary and the owner of the subsoil each bear the charges encumbering what constitutes the object of their respective rights of ownership.

1154. Superficies established by way of a construction lease enables the lessee, with the permission of the lessor, to make constructions, works or plantations and be recognized as their owner.

The superficiary may transfer or sub-let his rights under the lease. He may also, acting alone, charge the leased immovable with expedient servitudes, even in favour of third persons. These servitudes are extinguished on the termination of the right.

1155. Superficies may be perpetual; that established 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

1156. Superficies is terminated

(1) By the union of the qualities of subsoil owner and superficiary 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.

1157. Superficies is not terminated by the total loss or expropriation of the constructions, works or plantations or by their expropriation or the expropriation of the subsoil.

1158. At the termination of superficies, the subsoil owner acquires ownership of the constructions, works or plantations by paying their value to the superficiary, if they are of smaller value than the subsoil.

If the constructions, works or plantations are equal in value to the subsoil or of greater value, the superficiary has a right to acquire ownership of the subsoil by paying its value to the subsoil owner, unless he prefers, at his own expense, to remove the constructions, works and plantations he has made and return the subsoil to its former condition.

1159. Where the superficiary fails to exercise his right to acquire ownership of the subsoil within ninety days following the end of the superficies, the owner of the subsoil becomes owner by accession of the constructions, works and plantations.

1160. A subsoil owner and a superficiary who do not agree on the price and other terms and conditions of acquisition of the subsoil or of the constructions, works or plantations may apply to the court to fix the price and the terms and conditions of acquisition. The judgment then serves as a title and has all the effects thereof.

They may also, if they fail to agree on the terms and conditions of removal of the constructions, works or plantations, apply to the court to fix them.

TITLE FOUR

DISMEMBERMENTS OF THE RIGHT OF OWNERSHIP

GENERAL PROVISION

1161. Usufruct, use, servitude and emphyteusis are dismemberments of the right of ownership and are real rights.

CHAPTER I

USUFRUCT

SECTION I

NATURE OF USUFRUCT

1162. 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.

1163. Usufruct is established by contract, by will or by law; it may also be established by judgment in the cases prescribed by law.

1164. Usufruct may be established for the benefit of one or several usufructuaries jointly or successively.

The usufructuaries shall exist when the usufruct opens.

1165. No usufruct may last longer than one hundred years even if the deed granting it provides a longer term or creates a successive usufruct.

Usufruct granted without a term is granted for life or, if the usufructuary is a legal person, for thirty years.

SECTION II

RIGHTS OF THE USUFRUCTUARY

§ 1.—*Scope of usufruct*

1166. 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.

1167. 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.

1168. The usufructuary appropriates the fruits and revenues produced by the property.

1169. 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.

1170. 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.

1171. The usufructuary is entitled to the 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.

1172. 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.

1173. Extraordinary 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.

1174. 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.

1175. 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.

1176. Voting rights attached to shares or to other securities, to an undivided share, to a fraction of a property held in co-ownership or to any other property belong to the usufructuary.

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.

The distribution of the exercise of the voting rights cannot be set up against third persons; it is discussed only between the usufructuary and the bare owner.

1177. The usufructuary may transfer his right or lease a property comprised in the usufruct.

1178. 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.—*Expenses*

1179. Necessary expenses made by the usufructuary are treated, in relation to the bare owner, as those made by a possessor in good faith. The same rule applies to useful expenses.

§ 3.—*Trees and minerals*

1180. 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.

1181. 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 operations begin, 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.

1182. 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*

1183. The usufructuary, in the manner of an administrator of the property of others, shall make an inventory of the property subject

to his right unless the creator of the usufruct has done so himself or has exempted the usufructuary. No exemption may be granted if the usufruct is successive.

The usufructuary shall make the inventory at his own expense and shall furnish a copy to the bare owner.

1184. In no case may the usufructuary compel the creator of the usufruct or the bare owner to deliver the property to him until he has made an inventory.

1185. 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 performance 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 perform them or if the creator of the usufruct so provides.

1186. 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 invest the amounts included in the usufruct and the proceeds of the sale of perishable goods. He shall similarly invest the amounts deriving from payment of the claims subject to the usufruct.

1187. The usufructuary's delay to make an inventory of the property or to furnish security deprives him of his right to the fruits and revenues from the opening of the usufruct to the performance of his obligations.

1188. 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*

1189. 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.

1190. 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.

1191. 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.

1192. 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.

1193. 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, electrical, plumbing or electronic systems, and, in respect of movables, motive parts or casing of the property.

1194. 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*

1195. 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.

1196. If a usufructuary under a particular legacy is forced to pay a debt in order to preserve the property subject to his right, he may require immediate repayment from the debtor or repayment from the bare owner at the end of the usufruct.

1197. The usufructuary under a general legacy 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.

1198. The usufructuary under a general legacy 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.

1199. 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 under a general legacy 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.

1200. 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.

1201. 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.

1202. 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

1203. 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 renunciation of the right or its conversion into a rent;

(5) By non-user for thirty years.

1204. Usufruct is also terminated by the total loss of the property over which it is established, unless the property is insured by the usufructuary.

In case of partial destruction of the property, the usufruct subsists upon the remainder.

1205. 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.

1206. 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.

1207. A usufruct created for the benefit of several usufructuaries successively terminates with the death of the last usufructuary or the dissolution of the last legal person.

In the case of a joint usufruct, the extinction of the usufruct in respect of one of the usufructuaries benefits the bare owner.

1208. 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.

1209. 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 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.

1210. A usufructuary may renounce his right, in whole or in part.

Where part only of the right is renounced and failing an agreement, the court 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.

1211. 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.

1212. A usufructuary having serious difficulty in performing 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

1213. 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.

1214. The right of use is unassignable and unseizable unless the agreement between the parties provides otherwise.

If the agreement is silent as to the assignability or seizability of the right, the court may, in the interest of the user and after ascertaining that the owner incurs no damage, authorize the assignment or seizure of the right.

1215. A user whose right bears on part only of an immovable may make use of any facility intended for common use.

1216. A user who takes all the fruits and revenues of the property or occupies the entire immovable is fully responsible for the costs incurred to produce them, for maintenance repairs and for payment of the charges in the same manner as a usufructuary.

Where the user takes only part of the fruits and revenues or occupies only part of the immovable, he shall contribute in proportion to his use.

1217. 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

1218. 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.

1219. An obligation to perform an act may be attached to a servitude and imposed on the owner of the servient land. The obligation creates a real right that is accessory to the servitude and can only be stipulated for the service or exploitation of the immovable.

1220. 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.

1221. Servitudes are either apparent or unapparent.

An apparent servitude is manifested by an external sign; otherwise a servitude is unapparent.

1222. A servitude is established by contract, by will, by destination of proprietor 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.

1223. 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.

1224. Servitude by destination of proprietor is evidenced in a writing 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 or maintained the material arrangement between them which constitutes the servitude.

SECTION II

EXERCISE OF THE SERVITUDE

1225. The owner of the dominant land may, at his own expense, take the measures or make 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 place to its former condition.

1226. The owner of the servient land, charged by the title with making the necessary works for the exercise and preservation of the servitude, may free himself of the charge by abandoning the entire servient land or any part of it sufficient for the exercise of the servitude to the owner of the dominant land.

1227. 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.

1228. 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.

1229. Division of the servient land does not affect the rights of the owner of the dominant land.

1230. 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.

1231. The parties may exclude, in writing, the possibility of redeeming a servitude for a period not exceeding thirty years.

SECTION III

TERMINATION OF SERVITUDES

1232. 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.

1233. 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.

1234. The mode of exercising a servitude may be prescribed just as the servitude itself, and in the same manner.

1235. 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

1236. Emphyteusis is a right resulting from a contract by which a person acquires for a certain time the right to the full benefit and enjoyment of an immovable owned by another provided he does not

endanger its existence and undertakes to make constructions, works or plantations thereon that increase or enhance its value.

1237. 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.

1238. A contract of emphyteusis respecting an immovable on which divided co-ownership is established may be renewed without the emphyteutic lessee's being required to make constructions, works or plantations thereon to enhance the immovable or increase its value.

1239. 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

1240. The emphyteutic lessee has all the rights of an owner over the immovable, subject to the restrictions contained in this chapter and 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 performance of the contract.

1241. 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.

1242. 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.

1243. The emphyteutic lessee is responsible for repairs, even major repairs, concerning the immovable or the constructions, works or plantations made for the performance of his obligation.

1244. 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 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 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.

1245. The emphyteutic lessee is responsible for all real charges affecting the immovable.

1246. The owner has the same obligations towards the emphyteutic lessee as a vendor.

1247. 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 apply for resiliation of the contract.

Resiliation cannot be applied for where the immovable under emphyteusis is held in divided co-ownership.

SECTION III

TERMINATION OF EMPHYTEUSIS

1248. 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;

(5) By non-user for thirty years.

1249. 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 resiliation by agreement of the contract or from the union of the qualities of owner and emphyteutic lessee in the same person.

1250. Upon termination of the emphyteusis, the emphyteutic lessee shall return the immovable in a good state of repair with the constructions, works or plantations stipulated in the contract, unless they have perished by fortuitous event.

Any construction, works or plantation made without obligation is treated as an expense made by a possessor in bad faith.

1251. Unless the emphyteutic lessee has renounced his right, emphyteusis may also be terminated by abandonment, which may take place only if the emphyteutic lessee has 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

1252. 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 dismembered 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.

1253. 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 greater interest.

1254. 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.

1255. A stipulation of inalienability of a property entails the unseizability of the property for any debt contracted before or during the period of inalienability by the person who receives the property, subject in particular to the provisions of the Code of Civil Procedure.

1256. 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 null.

The same rule applies to any penal clause to the same effect.

1257. 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

1258. 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.

1259. 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.

1260. 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.

1261. 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.

1262. The rules on successions, particularly those relating to the right to elect or to testamentary dispositions, adapted as required, apply to a substitution from the time it opens, whether created by gift or by will.

SECTION II

SUBSTITUTIONS BEFORE OPENING

§ 1.—*Rights and obligations of the institute*

1263. Before the opening of a substitution, the institute is the owner of the substituted property, which forms, within his personal patrimony, a separate patrimony intended for the substitute.

1264. Within two months after the gift or after acceptance of the legacy, the institute, in the manner of an administrator of the property of others, shall make an inventory of the property, after convening the substitute.

The institute shall make the inventory at his own expense.

1265. The institute, in exercising his rights and performing his obligations, shall act with prudence and diligence, in view of the rights of the substitute.

1266. 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 to the substituted property.

1267. 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.

1268. 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.

1269. An institute may alienate the substituted property by onerous title or lease it. He may also offer it as security if that is 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.

1270. 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 the provisions relating to investments presumed sound.

1271. On each anniversary of the date of inventory of the property, the institute shall inform the substitute of any change in the general mass of the property; he shall also inform him of any reinvestment he has made of the substituted property.

1272. 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.

1273. 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 patrimony of the institute. The substitute may oppose the seizure and demand that the seizure and sale be limited to the rights conferred on the institute by the substitution. Failing opposition, the sale is valid; the purchaser has a definitive title and the substitute's right of action is exercisable only against the institute.

1274. 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*

1275. Before the substitution opens, the substitute has a contingent right in the property substituted; he may dispose of or renounce his right and perform any conservatory act to ensure the protection of his right.

1276. The substitute may, where the institute refuses or fails to make an inventory of the property within the required time, do so at the expense of the institute. He shall then convene the institute and the other interested persons.

1277. 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 performance of his obligations.

The institute shall also furnish additional security where his obligations are increased before the opening of the substitution.

1278. If the institute fails to perform his obligations or acts in a manner that endangers the rights of the substitute, the court may, depending on the gravity of the circumstances, deprive the institute of revenues, require him to restore the capital, declare his rights forfeited in favour of the substitute or appoint a sequestrator chosen by preference from the substitutes.

1279. 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

1280. 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.

1281. 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.

1282. 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

1283. The substitute who accepts the substitution receives the property directly from the grantor and is, by the opening, seized of ownership of the property.

1284. 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.

1285. 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.

1286. 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.

1287. 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.

1288. The institute is entitled to be reimbursed for the useful expenses he has made, subject to the rules applicable to possessors in good faith.

1289. 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.

1290. The institute may retain the substituted property until payment of what is due to him.

1291. The heirs of the institute shall perform the obligations that this section imposes on the institute, and they 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

1292. 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.

1293. 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.

1294. 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.

1295. 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 PATRIMONIES BY APPROPRIATION

CHAPTER I

THE FOUNDATION

1296. Foundation results from an act whereby a person irrevocably appropriates the whole or part of his property to the durable fulfilment of a socially beneficial purpose.

No foundation may have the making of profit or the operation of an enterprise as its main object.

1297. The property of the foundation constitutes either an autonomous patrimony distinct from that of the settlor or any other person, or the patrimony of a legal person.

In the first case, the foundation is governed by the provisions of this title relating to a social trust, subject to the provisions of law; in the second case, the foundation is governed by the laws applicable to legal persons of the same kind.

1298. A foundation created by trust is established by gift or by will in accordance with the rules governing those acts.

1299. 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 purpose, either by the

distribution only of those revenues that derive therefrom or by a use that does not appreciably alter the substance of the initial property.

CHAPTER II

THE TRUST

SECTION I

NATURE OF THE TRUST

1300. A trust results from an act whereby a person called the settlor transfers property from his patrimony to another patrimony which he appropriates to a particular purpose and which a trustee undertakes, by his acceptance, to hold and administer.

1301. The trust patrimony, consisting of the property transferred in trust, constitutes a patrimony by appropriation, autonomous and distinct from that of the settlor, trustee or beneficiary and in which none of them has any real right.

1302. A trust is established by contract, whether by onerous title or gratuitously, by will or, in certain cases, by operation of law.

1303. 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.

1304. Acceptance of the trust divests the settlor of the property, charges the trustee with seeing to the appropriation of the property and the administration of the trust patrimony and is sufficient to establish the right of the beneficiary with certainty.

SECTION II

VARIOUS KINDS OF TRUSTS AND THEIR DURATION

1305. Trusts are created for personal, private or social purposes.

1306. A personal trust is created gratuitously with the aim of securing a benefit for a determinate or determinable person.

1307. 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.

1308. 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.

1309. 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 enterprise as its main object.

1310. 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.

1311. 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 is stipulated. The right of beneficiaries of subsequent ranks may open later but solely for the benefit of those beneficiaries who have the required quality to receive at the expiry of one hundred years after creation of the trust.

In no case may a legal person be a beneficiary for a period exceeding one hundred years, even if a longer term is stipulated.

1312. A private or social trust may be perpetual.

SECTION III

ADMINISTRATION OF THE TRUST

§ 1.—*Designation and office of the trustee*

1313. A natural person having the full exercise of his civil rights, and a legal person authorized by law, may act as a trustee.

1314. 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.

1315. The settlor may appoint one or several trustees or provide the mode of their appointment or replacement.

1316. The court may, at the request of an interested person and after notice has been given to the persons it indicates, appoint a trustee where the settlor, having manifested his intention of doing so, has nevertheless failed to do so or where it is impossible to appoint or replace a trustee.

The court may similarly appoint one or several additional trustees where required by the conditions of the administration.

1317. A trustee has the control and the exclusive administration of the trust patrimony; he exercises all the rights attached to the patrimony 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*

1318. 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.

1319. The beneficiary of a trust shall, in order to receive, meet the conditions required by the constituting instrument.

1320. 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 created by gratuitous title, or participate in the benefits that it procures.

1321. The settlor may reserve for himself or confer on the trustee or a third person the power to appoint the beneficiaries or determine their shares.

In the case of a social trust, the trustee's power to appoint the beneficiaries and determine their shares is presumed. In the case of

personal or private trusts, the power to appoint may be exercised by the trustee or the third person only if the class of persons from which he may appoint the beneficiary is sufficiently determined in the constituting instrument.

1322. The power to appoint 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 appoint beneficiaries may do so for his own benefit.

1323. 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.

1324. The beneficiary of a trust created 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; he must do so by notarial deed *en minute* if he is the beneficiary of a personal or private trust.

1325. 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*

1326. The administration of a trust is subject to the supervision of the settlor or of his heirs, if he has died, and of the beneficiary, even a future beneficiary.

In addition, in cases provided for by law, the administration of a private or social trust is subject, according to its object and purpose, to the supervision of the persons or bodies designated by law.

1327. Upon the creation 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.

1328. 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 determinable or future, may be a beneficiary, the rights granted to the beneficiary under this subsection may be exercised by the public curator.

1329. 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 perform his obligations or to perform any act which is necessary in the interest of the trust, to enjoin him to abstain from any action harmful to the trust or to have him removed.

The person contemplated in the first paragraph may also impugn any acts performed by the trustee in fraud of the trust patrimony or the rights of the beneficiary.

1330. 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.

1331. The trustee, the settlor and the beneficiary are jointly and severally liable for acts in which they participate performed in fraud of the rights of the creditors of the settlor or of the trust patrimony.

SECTION IV

CHANGES TO THE TRUST AND TO THE PATRIMONY

1332. Any person may increase the trust patrimony by transferring property to the patrimony by contract or by will in conformity, in so

doing, with the rules applicable to the creation of a trust. The person does not acquire the rights of a settlor by that fact.

The transferred property is mingled with the other property of the trust patrimony and is administered in accordance with the provisions of the constituting instrument.

1333. 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 or too onerous, the court may, on the application of an interested person, terminate the trust; the court may also, in the case of a social trust, substitute another closely related purpose for the original purpose of the trust.

Where the trust continues to meet the intent of the settlor but new measures would allow a more faithful compliance with his intent or favour the fulfilment of the trust, the court may amend the provisions of the constituting instrument and, in particular, allow the trust to be prolonged.

1334. 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 THE TRUST

1335. A trust is terminated by the renunciation or the lapse of the right of all the beneficiaries, both of the capital and of the fruits and revenues.

A trust is also terminated by the expiry of the term or the fulfilment of the condition, by the fulfilment of the trust or by the impossibility, confirmed by the court, of fulfilling it.

1336. 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.

1337. The property of a social trust that terminates by the impossibility of its fulfilment devolves to a trust, to a legal person or

to any other group of persons devoted to a purpose as nearly like that of the trust as possible, designated by the court on the recommendation of the trustee. The court shall also obtain the advice of the person or body designated by law if the trust was subject to the supervision of such person or body.

TITLE SEVEN

ADMINISTRATION OF THE PROPERTY OF OTHERS

CHAPTER I

GENERAL PROVISIONS

1338. Any person who is charged with the administration of property or a patrimony that is not his own assumes the office of administrator of the property of others if the law or the juridical act constituting his administration so provides or indicates no other form of administration.

1339. Unless, pursuant to the law, the act or the circumstances, the administration is gratuitous, the administrator is entitled to the remuneration fixed in the act 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

1340. 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.

1341. 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.

1342. An administrator shall continue the use of the property which produces fruits and revenues without changing its destination, unless he is authorized by the beneficiary or, if that is not possible, by the court.

1343. 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 sound investments.

An administrator may likewise change any investment made before he took office or that he has made himself.

1344. 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

1345. A person charged with full administration shall preserve the property and make it productive, increase the patrimony or appropriate it to a purpose, where the interest of the beneficiary or the fulfilment of the purpose requires it.

1346. An administrator may, to perform his obligations, alienate the property by onerous title, encumber it with 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

1347. 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.

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.

1348. An administrator shall act with the prudence, diligence and competence of a prudent and reasonable person acting in similar circumstances.

1349. An administrator shall act honestly and faithfully in the best interest of the beneficiary or of the object pursued.

1350. 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.

1351. An administrator shall, without delay, notify in writing the beneficiary of any interest he has in an enterprise that is apt to place him in a position of conflict of interest and of the rights he may invoke against the beneficiary or in the property administered indicating, where 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 of any interest or rights pertaining to a trust under the supervision of the person or body.

1352. 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.

1353. No administrator may mingle the administered property with his own property.

1354. 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.

1355. 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 value, renounce any right belonging to the beneficiary or forming part of the patrimony administered.

1356. 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.

1357. 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.

1358. The court, in appreciating the extent of the responsibility of an administrator and fixing the damages resulting therefrom, may reduce or mitigate them in view of the circumstances in which the administration is assumed or of the fact that the administrator acts gratuitously or that he is a minor or a person of full age under protective supervision.

SECTION II

OBLIGATIONS OF THE ADMINISTRATOR
AND BENEFICIARY TOWARDS THIRD PERSONS

1359. Where an administrator binds himself, within the limits of his powers, in the name of the beneficiary or the trust patrimony, he is not personally 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 patrimony.

1360. 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.

1361. 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.

1362. 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 from the act. In the case of a trust, these obligations fall back upon the trust patrimony.

1363. Where a person fully capable of exercising civil rights has given reasonable grounds 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

1364. An administrator is not bound to make an inventory, to take out liability insurance or to furnish other security unless required to do so by law or by the act, or, again, by the court on the application of the beneficiary or any interested person.

Where the act creates the obligations, the administrator may apply for an exemption if circumstances warrant.

1365. 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.

1366. 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 patrimony.

It shall contain the following in particular:

1. The description of the immovables, and a description of the movables, with indication of their 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.

1367. The inventory shall be made by a notary in the form of a notarial deed *en minute*. It may also be 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.

1368. Where the administered patrimony contains personal effects of the holder of the patrimony or, as the case may be, of the deceased, a general reference to them in the inventory is sufficient, describing only clothing, personal papers, jewelry or everyday objects worth over $100 each.

1369. A universality of assets and liabilities, such as an enterprise or a business concern, 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.

1370. 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.

1371. The administrator shall furnish a copy of the inventory to the person who entrusted him with the administration and to the beneficiary of the administration, and also to every other person he knows to have an interest. He shall also, where required by law, file the inventory or notice of the 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.

1372. 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; he shall do so at the expense of the beneficiary or trust if his administration is gratuitous.

SECTION IV

JOINT ADMINISTRATION AND DELEGATION

1373. 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.

1374. 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.

1375. 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.

1376. 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 to the beneficiary in due time.

1377. 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.

1378. 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, among other things, he knew or should have known that the person was incompetent or if he was not authorized to give the mandate.

1379. A beneficiary who suffers prejudice may repudiate the acts of the person mandated by the administrator if they are done contrary to the constituting 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

1380. Investments in the following are presumed sound:

1. Corporeal immovables situated in Québec;

2. Bonds or other evidences of indebtedness issued or guaranteed by Québec, Canada or a province of Canada, the United States of America or any of its member states, the International Bank for Reconstruction and Development, a municipality or a school board in Canada, or a fabrique in Québec;

3. Bonds or other evidences of indebtedness issued by a legal person operating a public service in Canada and which is entitled to impose a tariff for such service;

4. Bonds or other evidences of indebtedness secured by an undertaking, towards a trustee, of Québec, Canada or a province of Canada, to pay sufficient subsidies to meet the interest and the capital on the maturity of each;

5. Bonds or other evidences of indebtedness of a company in the following cases:

(*a*) They are secured by a privilege or a hypothec ranking first on a corporeal immovable, or by pledge of securities presumed to be sound investments;

(*b*) They are secured by a pledge of equipment ranking first and the company has regularly serviced the interest on its borrowings during the last ten financial years;

(*c*) They are issued by a company whose common or preferred shares are presumed sound investments;

6. Bonds or other evidences of indebtedness issued by a loan society incorporated by a statute of Québec or authorized to do business in Québec under the Loan and Investment Societies Act (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 municipalities or school boards and to fabriques or loans secured by hypothec ranking first on immovables situated in Québec;

7. Debts secured by hypothec on immovables in Québec:

(*a*) If payment of the capital and interest is guaranteed or secured by Québec, Canada or a province of Canada;

(*b*) If the amount of the debt is not more than seventy-five per cent of the value of the immovable property securing payment of the debt after deduction of the other debts secured by the same immovable and ranking equally with or before the debt;

(*c*) If the amount of the debt that exceeds seventy-five per cent of the value of the immovable by which it is secured, after deduction of the other debts secured by the same immovable and ranking equally with or before the debt, is guaranteed or secured by Québec, Canada or a province of Canada, the Central Mortgage and Housing Corporation, the Société d'habitation du Québec or a hypothec insurance policy issued by a legal person holding a permit under the Act respecting insurance (R.S.Q., chapter A-32);

8. Fully paid preferred shares issued by a company whose common shares are presumed sound investments or which, during the last five financial years, has distributed the stipulated dividend on all its preferred shares;

9. Common shares issued by a company that for three years has been meeting the timely disclosure requirements defined in the Securities Act (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 market capitalization, not considering preferred shares or blocks of shares of ten per cent or more, is higher than the amount fixed in the order;

10. Shares of a mutual fund and units of an unincorporated mutual fund or of a private trust, provided that sixty per cent of its portfolio consists of 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 company, the fund or the trust has been fulfilling the timely disclosure requirements defined by that Act for three years.

1381. The administrator shall decide on the investments to make according to the yield and the anticipated capital gain; so far as possible, he shall work toward a diversified portfolio producing fixed income and variable revenues in the proportion suggested by the prevailing economic conditions.

Notwithstanding the foregoing, the administrator shall not acquire more than five per cent of the shares of the same legal person, nor acquire shares, bonds or other evidences 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.

1382. An administrator may deposit the sums of money entrusted to him in or with a bank, savings bank, trust society, société d'entraide économique or a savings and credit union, if the deposit is repayable on demand or on thirty days' notice.

The administrator may also deposit the sums of money for a longer term if repayment of the deposit is fully guaranteed by the Régie de l'assurance-dépôts du Québec; otherwise, he may not do so except with leave of the court and on the conditions it determines.

1383. An administrator may maintain the existing investments upon his taking office even if they are not presumed sound investments.

The administrator may also hold securities which, following the reorganization, winding-up or amalgamation of a legal person, replace securities he held.

1384. 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.

1385. Investments made in the course of administration shall be made in the name of the administrator acting in that quality.

SECTION VI

APPORTIONMENT OF PROFIT AND EXPENDITURE

1386. 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 act.

Failing sufficient indication in the act, 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.

1387. 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.

1388. 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 attributable to capital, even where the law governing such taxes considers them to be income taxes, are also generally debited from the capital account.

1389. The beneficiary of the fruits and revenues is entitled to the net income of the administered property from the date determined in the act giving rise to the administration or, if no date is determined, from the date of the beginning of the administration or that of the death.

1390. Fruits and revenues payable periodically are counted day by day.

Dividends and distributions of a legal person are due from the date indicated in the declaration of distribution or, failing that, from the date of the declaration.

1391. 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

1392. An administrator shall render a summary account of his administration to the beneficiary at least once a year.

1393. 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 expert.

1394. Where there are several administrators, they shall render one and the same account unless their duties have been divided by law, the act or the court, and the division has been made accordingly.

1395. 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

1396. 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.

1397. 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 act giving rise to the administration;

3. By achievement of the object of the administration or disappearance of the cause having given rise to it.

1398. 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.

1399. The resignation of an administrator takes effect on the date the notice is received or on any later date indicated in the notice.

1400. 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.

1401. 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.

1402. Upon the death of the administrator, the liquidator of his succession, if he is aware of the administration, shall give notice of 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.

1403. Obligations contracted towards third persons in good faith by an administrator who is unaware that his administration has terminated are valid and bind the beneficiary or the trust patrimony; the same rule applies to obligations contracted by the administrator after the end of the administration that are its necessary consequence or are required to prevent a loss.

The beneficiary or the trust patrimony is also bound by the obligations contracted towards third persons who were unaware that the administration had terminated.

SECTION II

RENDERING OF ACCOUNT AND DELIVERY OF THE PROPERTY

1404. 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.

1405. 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.

1406. An administrator shall deliver over the administered property at the place agreed upon or, failing that, where it is.

1407. An administrator shall deliver over all that he has received in the performance of his duties, even if what he has received was not due to the beneficiary or to the trust patrimony; he is also accountable for any personal profit or benefit he has realized by using, without authorization, information he had obtained by reason of his administration.

Where an administrator has used property without authorization, he is bound to compensate the beneficiary or the trust patrimony for his use by paying an appropriate rent or the interest on the money.

1408. Administration expenses, including the cost of rendering account and delivering the property, are borne by the beneficiary or the trust patrimony.

The resignation or replacement of the administrator obliges the beneficiary or the trust patrimony to pay him, apart from the administration expenses, any remuneration he has earned.

1409. An administrator owes interest on the balance from the close of the final account or the formal notice to produce it; the beneficiary or the trust patrimony owes interest only from the formal notice.

1410. An administrator is entitled to deduct from the sums he is required to remit what the beneficiary or the trust patrimony owes him by reason of the administration.

An administrator may detain the administered property until payment of what is owed to him.

1411. Where there are several beneficiaries, their obligation towards the administrator is joint and several."

Coming into force

3. This Act will come into force on the date or dates fixed by the Government in accordance with an Act to implement the reform of the Civil Code.

TABLE OF CONTENTS OF THE CIVIL CODE OF QUÉBEC

PRELIMINARY PROVISION

BOOK ONE: PERSONS

BOOK THREE: SUCCESSIONS