This document has been provided by the International Center for Not-for-Profit Law (ICNL).

ICNL is the leading source for information on the legal environment for civil society and public participation. Since 1992, ICNL has served as a resource to civil society leaders, government officials, and the donor community in over 90 countries.

Visit ICNL's **Online Library** at
http://www.icnl.org/knowledge/library/index.php
for further resources and research from countries all over the world.

CIVIL CODE

MISE A JOUR LEGIFRANCE 21 February 2004

Dernier texte modificateur : ordonnance n° 2004-164 du 20 Feb. 2004

Translated by Georges Rouhette, Professor of Law, with the assistance of Anne Berton, Research Assistant in English.

CIVIL CODE

PRELIMINARY TITLE OF THE PUBLICATION, OPERATION AND APPLICATION OF STATUTES IN GENERAL

Art. 1

Statutes become in force throughout the French territory by virtue of their being promulgated by the President of the Republic [Constitution of 4 Oct. 1958, art. 10].

They shall be enforced in every part of the Republic from the moment their promulgation can be known.

The promulgation made by the President of the Republic shall be deemed known in the département where the Government is sitting one day after the day of promulgation; and in all the other départements, after the expiry of the same period, increased by one day per ten myriameters (about twenty ancient leagues) between the city where the promulgation is made and the chief town of each département 1.

1 Shall continue in force until 31 May 2004

Art. 1 (Ord. n° 2004-164 of 20 Feb. 20041).- Statutes and, when they are published in the Journal Officiel de la République Française, administrative acts shall come into force on the date specified in them or, in the absence thereof, on the day after their publication. However, the commencement of those of their provisions whose enforcement requires implementing measures shall be postponed to the date of commencement of said measures.

In case of emergency, statutes whose decree of promulgation so prescribes and administrative acts as to which the Government so orders by a special provision shall come into force as soon as they are published.

The provisions of this Article shall not apply to acts of individual application.

1 Shall come into force on 1 June 2004

Art. 2

Legislation provides only for the future; it has no retrospective operation.

Art. 3

Statutes relating to public policy and safety are binding on all those living on the territory.

Immovables are governed by French law even when owned by aliens.

Statutes relating to the status and capacity of persons govern French persons, even those residing in foreign countries.

Art. 4

A judge who refuses to give judgment on the pretext of legislation being silent, obscure or insufficient, may be prosecuted for being guilty of a denial of justice.

Art. 5

Judges are forbidden to decide cases submitted to them by way of general and regulatory provisions .

Art. 6

Statutes relating to public policy and morals may not be derogated from by private agreements .

BOOK ONE OF PERSONS

TITLE ONE OF CIVIL RIGHTS

CHAPTER I - OF ENJOYMENT OF CIVIL RIGHTS

Art. 7

(Act of 26 June 1889)

The exercise of civil rights is unrelated to the exercise of political rights which are acquired and kept in accordance with constitutional and electoral statutes.

Art. 8

(Act of 26 June 1889)

Every French person enjoys civil rights.

Art. 9

(Act n° 70-643 of 17 July 1970)

Everyone has the right to respect for his private life.

Without prejudice to compensation for injury suffered, the court may prescribe any measures, such as sequestration, seizure and others, appropriate to prevent or put an end to an invasion of personal privacy; in case of emergency those measures may be provided for by interim order.

Art. 9-1

(Act n° 93-2 of 4 Jan. 1993)

Everyone has the right to respect of the presumption of innocence.

(Act n° 2000-516 of 15 June 2000) Where, before any sentence, a person is publicly shown as being guilty of facts under inquiries or preliminary investigation, the court, even by interim order and without prejudice to compensation for injury suffered, may prescribe any measures, such as the insertion of a rectification or the circulation of a communiqué, in order to put an end to the infringement of the presumption of innocence, at the expenses of the natural or juridical person liable for that infringement.

Art. 10

(Act n° 72-626 of 5 July 1972)

Everyone is bound to collaborate with the court so that truth may come out.

He who, without legitimate reason, eludes that obligation when it has been legally prescribed to him, may be compelled to comply with it, if need be on pain of periodic penalty payment or of a civil fine, without prejudice to damages.

Art. 11

An alien enjoys in France the same civil rights as those that are or will be granted to French persons by the treaties of the nation to which that alien belongs.

Art. 12 and 13 [repealed]

Art. 14

An alien, even if not residing in France, may be cited before French courts for the performance of obligations contracted by him in France with a French person; he may be called before the courts of France for obligations contracted by him in a foreign country towards French persons.

Art. 15

French persons may be called before a court of France for obligations contracted by them in a foreign country, even with an alien.

CHAPTER II – THE OF RESPECT OF THE HUMAN BODY

(Act n° 94-653 of 29 July 1994)

Art. 16

Legislation ensures the primacy of the person, prohibits any infringement of the latter's dignity and safeguards the respect of the human being from the outset of life.

Art. 16-1

Everyone has the right to respect for his body.

The human body is inviolable.

The human body, its elements and its products may not form the subject of a patrimonial right.

Art. 16-2

The court may prescribe any measures appropriate to prevent or put an end to an unlawful invasion of the human body or to unlawful dealings relating to its elements or products.

Art. 16-3

There shall be no invasion of the integrity of the human body except in case of "medical" (Act n° 99-641 of 27 July 1999) necessity for the person.

The consent of the person concerned must be obtained previously except when his state necessitates a therapeutic intervention to which he is not able to assent.

Art. 16-4

Nobody may invade the integrity of mankind.

Any eugenic practice which aims at organizing the selection of persons is forbidden.

Without prejudice to researches aiming at preventing and treating genetic diseases, there may be no alteration of the genetic characters with a view to changing the descent of a person.

Art. 16-5

Agreements that have the effect of bestowing a patrimonial value to the human body, its elements or products are void.

Art. 16-6

No remuneration may be granted to a person who consents to an experimentation on himself, to the taking of elements off his body or to the collection of products thereof.

Art. 16-7

All agreements relating to procreation or gestation on account of a third party are void.

Art. 16-8

No information enabling the identification of both the person that donates an element or a product of his body and the person that receives it may be disclosed. The donor may not be acquainted with the identity of the receiver and the receiver may not be acquainted with that of the donor.

In case of therapeutic necessity, only the physicians of the donor and receiver may have access to the information enabling the identification of the two persons concerned.

Art. 16-9

The provisions in this chapter are mandatory.

CHAPTER III - OF THE GENETIC STUDY OF THE PARTICULARS OF A PERSON AND OF THE IDENTIFICATION OF A PERSON OWING TO HIS GENETIC PRINTS

(Act n° 94-653 of 29 July 1994)

Art. 16-10

A genetic study of the particulars of a person may be undertaken only for medical purposes or in the interest of scientific research .

The consent of the person must be obtained before the carrying out of the study.

Art. 16-11

The identification of a person owing to his genetic prints may only be searched for within the framework of inquiries or investigations pending judicial proceedings or for medical purposes or in the interest of scientific research .

In civil matters, that identification may be sought only in implementation of proof proceedings directed by the court seized of an action aiming either at establishing or at contesting a parental bond, or for getting or discontinuing subsidies. The consent of the person must be obtained previously and expressly.

Where the identification is made for medical purposes or in the interest of scientific research, the consent of the person must be obtained previously.

Art. 16-12

Only persons whom have been authorized in such a way as prescribed by a decree in Conseil d'État are entitled to undertake identifications owing to genetic prints. In the framework of judicial proceedings, those persons must besides be registered in a list of judicial experts.

Art. 16-13

(Act n° 2002-303 of 4 March 2002).- No one may be discriminated against on the basis of his genetic features.

TITLE ONE bis

OF FRENCH NATIONALITY

(Act n° 93-33 of 22 July 1993)

CHAPTER I - GENERAL PROVISIONS

Art. 17

(Act n° 73-42 of 9 Jan. 1973)

French nationality is granted, acquired or lost according to the provisions laid down in this Title, subject to any treaties and other international commitments of France which may apply.

Art. 17-1

(Act n° 73-42 of 9 Jan. 1973)

New statutes related to the granting of nationality by birth shall apply to persons who are minors at the time of their entry into force, without prejudice to the vested rights of third parties and without their being allowed to challenge the validity of transactions previously concluded on ground of nationality.

The provisions of the preceding paragraph shall apply for purposes of interpretation to the statutes related to nationality by birth that have come into force after the promulgation of Title I of this Code.

Art. 17-2

(Act n° 73-42 of 9 Jan. 1973)

Acquisition and loss of French nationality are governed by the law that is in force at the time of the act or fact to which legislation attributes those effects.

The provisions of the preceding paragraph shall govern for purposes of interpretation the commencement of the Nationality Acts that were in force before 19 October 1945.

Art. 17-3

(Act n° 93-933 of 22 July 1993)

Applications in view to acquiring, losing French nationality or being reinstated in that nationality, as well as declarations of nationality, may, in the way provided for by law, be made without authorization from the age of sixteen.

A minor under sixteen must be represented by the person or persons who exercise parental authority over him.

(Act n° 95-125 of 8 Feb. 1995) A minor between sixteen and eighteen who is prevented from expressing his intention by an impairing of his mental or bodily faculties must be likewise represented. The impediment shall be established by the judge of guardianships of his own motion, on application of a member of the family of the minor or of the Government procurator's office, upon presentation of a certificate issued by a specialist selected on a list drawn out by the Government procurator.

(Act n° 95-125 of 8 Feb. 1995) Where the minor mentioned in the preceding paragraph is placed under guardianship, he is represented by the guardian authorized to this end by the family council .

Art. 17-4

(Act n° 2003-1119 of 26 Nov. 2003).- Falling within the terms of this Title, the phrase "in France" means the metropolitan territory, overseas départements and territories as well as New Caledonia and the French Southern and Antartic Lands.

Art. 17-5

(Act n° 93-933 of 22 July 1993)

In this Title, majority and minority shall be understood according to the meaning they have in French law.

Art. 17-6

(Act n° 73-42 of 9 Jan. 1973)

In order to determine the French territory at any time, account shall be taken of modifications resulting from enactments of the French Government under the Constitution and statutes, as well as under international treaties previously concluded.

Art. 17-7

(Act n° 73-42 of 9 Jan. 1973)

In the absence of conventional stipulations, the effects upon French nationality of annexations and cessions of territories are governed by the following provisions.

Art. 17-8

(Act n° 73-42 of 9 Jan. 1973)

Nationals of the ceding State domiciled in the annexed territories on the day of the transfer of sovereignty acquire French nationality, unless they actually establish their domiciles outside those territories. Under the same reservation, French nationals domiciled in the ceded territories on the day of the transfer of sovereignty lose that nationality.

Art. 17-9

(Act n° 73-42 of 9 Jan. 1973)

The effects upon French nationality of the accession to independence of former overseas départements or territories of the Republic are determined in Chapter VII of this Title.

Art. 17-10

(Act n° 73-42 of 9 Jan. 1973)

The provisions of Article 17-8 shall apply for purposes of interpretation to changes of nationality following upon annexations and cessions of territories resulting from treaties concluded before 19 October 1945.

However, aliens who had their domiciles in territories retroceded by France under the Treaty of Paris of 30 May 1814 and who transferred their domiciles in France later than this Treaty, were not allowed to acquire French nationality on this ground unless they complied with the provisions of the Act of 14 October 1814. French persons who were born outside the retroceded territories and have kept their domiciles on those territories have not lost French nationality under the terms of the aforementioned Treaty.

Art. 17-11

(Ord. n° 45-2441 of 19 Oct. 1945)

Provided that there is no infringement of the interpretation given to former agreements, a change of nationality may not, in any case, follow from an international convention, unless the convention so provides expressly.

Art. 17-12 (Act n° 73-42 of 9 Jan. 1973)

Where, under the terms of an international convention, a change of nationality is subject to the performing of an act of option, that act shall be determined as to its form by the law of the contracting country in which it is performed.

CHAPTER II - OF FRENCH NATIONALITY BY BIRTH

Section I - Of French Persons by Parentage

Art. 18

(Act n° 73-42 of 9 Jan. 1973)

Is French a child, legitimate or illegitimate, of whom at least one parent is French.

Art. 18-1

(Act n° 93-933 of 22 July 1993)

If however only one of the parents is French, the child who was not born in France has the power to repudiate the status of French within six months preceding and twelve months following his majority.

(Act n° 73-42 of 9 Jan. 1973) That power is lost if the alien or stateless parent acquires French nationality during the minority of the child.

Section II - Of French Persons by Birth in France

Art. 19

(Act n° 73-42 of 9 Jan. 1973)

Is French a child born in France of unknown parents.

He shall however be deemed to have never been French if, during his minority, his parentage is established as regards an alien and if, under the national law of his parent, he has the nationality of the latter.

Art. 19-1

(Act n° 73-42 of 9 Jan. 1973)

Is French:

1° A child born in France of stateless parents;

2° A child born in France of alien parents and to whom the transmission of the nationality of either parent is not by any means allowed by foreign Nationality Acts.(Act n° 2003-1119 of 26 Nov. 2003).

(Act n° 98-170 of 16 March 1998) He shall however be deemed to have never been French if, during his minority, the foreign nationality acquired or possessed by one of his parents happens to pass to him.

Art. 19-2

(Act n° 73-42 of 9 Jan. 1973)

Shall be presumed born in France a child whose record of birth was drawn up in accordance with Article 58 of this Code.

Art. 19-3

(Act n° 73-42 of 9 Jan. 1973)

Is French a child, legitimate or illegitimate, born in France where one at least of his parents was himself born there.

Art. 19-4

(Act n° 73-42 of 9 Jan. 1973)

Where however only one parent was born in France, a child who is French under the terms of Article 19-3 has the power to repudiate this status within six months preceding and twelve months following his majority.

That power is lost where one of the parents acquires French nationality during the minority of the child.

Section III - Common Provisions

Art. 20

(Act n° 73-42 of 9 Jan. 1973)

A child who is French under this Chapter shall be deemed to have been French as from his birth, even where the statutory requirements for the granting of French nationality were fulfilled only at a later date.

(Act n° 76-1179 of 22 Dec. 1976) The nationality of a child who was the subject of a plenary adoption is determined according to the distinctions set out in Articles 18 and 18-1, 19-1, 19-3 and 19-4 above.

(Act n° 73-42 of 9 Jan. 1973) The establishing of the status of French later than birth may not however affect the validity of transactions previously concluded by the party concerned nor the rights previously acquired by third parties on the ground of the apparent nationality of the child.

Art. 20-1

(Act n° 73-42 of 9 Jan. 1973)

The parentage of a child has effect on his nationality only where it is established during his minority.

Art. 20-2

(Act n° 93-993 of 22 July 1993)

A French person who has the power to repudiate French nationality where this Title so provides may exercise that power by way of a declaration uttered in accordance with Articles 26 and following.

He may divest himself of that power from the age of sixteen in the same way.

Art. 20-3

(Act n° 73-42 of 9 Jan. 1973)

In the circumstances referred to in the preceding Article, nobody may repudiate French nationality unless he proves that he has by birth the nationality of a foreign country.

Art. 20-4

(Act n° 98-170 of 16 March 1998)

A French person who enlists in French forces loses the power to repudiate.

Art. 20-5

(Act n° 73-42 of 9 Jan. 1973)

The provisions of Articles 19-3 and 19-4 shall not apply to children born in France of diplomatic agents or of regular consuls of foreign nationalities.

(Act n° 93-993 of 22 July 1993) Those children have however the power to acquire voluntarily French nationality as provided for "in Article 21-11 below." (Act n° 98-170 of 16 March 1998)

CHAPTER III - OF THE ACQUISITION OF FRENCH NATIONALITY

Section I - Of the Modes of Acquiring French Nationality

§ 1 - Of the Acquisition of French Nationality by Reason of Parentage

Art. 21

(Act n° 73-4 of, 9 Jan. 1973)

As of right, ordinary adoption has no effect on the nationality of an adopted child.

§ 2 - Of the Acquisition of French Nationality by Reason of Marriage

Art. 21-1

(Act n° 73-4 of, 9 Jan. 1973)

As of right, marriage has no effect on nationality.

Art. 21-2

(Act n° 2003-1119 of 26 Nov. 2003)

An alien or stateless person who marries and whose spouse is of French nationality may, after a period of two years from the marriage, acquire French nationality by way of declaration provided that, at the time of the declaration, the community of living both affective and physical has not come to an end and the French spouse has kept his or her nationality. The foreign spouse must also prove a sufficient knowledge of the French language, according to his or her condition.

The duration of the community of living shall be raised to three years where the alien, at the time of the declaration, does not prove that he has resided in France uninterruptedly for at least one year from the marriage.

The declaration shall be made as provided for in Articles 26 and following. Notwithstanding the provisions of Article 26-1, it shall be registered by the Minister in charge of naturalisations.

Art. 21-3

(Act n° 73-42 of 9 Jan. 1973)

Subject to the provisions of Articles 21-4 and 26-3, the party concerned acquires French nationality at the date when the declaration is uttered.

Art. 21-4

(Act n° 93-993 of 22 July 1993)

By a decree in Conseil d'État, the Government may, on grounds of indignity or lack of assimilation other than linguistic (Act n° 2003-1119 of 26 Nov. 2003), oppose the acquisition of French nationality by the foreign spouse within a period of one year after the date of the acknowledgement of receipt provided for in Article 26, paragraph 2, or, where the registration was refused, after the day when the judgment which admits the lawfulness of the declaration has entered into force.

(Act n° 73-42 of 9 Jan. 1973) If there is an opposition by the Government, the party concerned shall be deemed to have never acquired French nationality.

However, the validity of transactions concluded between the declaration and the decree that challenges it may not be objected to on the ground that the maker was not allowed to acquire French nationality.

Art. 21-5

(Act n° 73-42 of 9 Jan. 1973)

Where a marriage is declared to be void by a judgment of a French court, or of a foreign court whose authority is acknowledged in France, the declaration laid down in Article 21-2 may not lapse with regard to the spouse who married in good faith.

Art. 21-6

(Act n° 73-42 of 9 Jan. 1973)

The annulment of a marriage may not have any effect on the nationality of the children born thereof .

§ 3 - Of the Acquisition of French Nationality by Reason of Birth and Residence in France

Art. 21-7

(Act n° 98-170 of 16 March 1998)

Every child born in France of foreign parents acquires French nationality on his coming of age where, at that time, he has his residence in France and has had his usual residence in France for a continuous or discontinuous period of at least five years, from the age of eleven.

The tribunaux d'instance, local authorities, public bodies and services and especially educational establishments are obliged to inform the public, and in particular those persons to whom paragraph 1 applies, of the provisions in force in matters of nationality. The requirements as to that information shall be prescribed by a decree in Conseil d'État.

Art. 21-8

(Act n° 98-170 of 16 March 1998)

The party concerned has the power to declare, in the way laid down in Article 26 and subject to his proving that he has the nationality of a foreign State, that he disclaims the status of French within six months before or twelve months after his majority .

In this event, he shall be deemed to have never been French.

Art. 21-9

(Act n° 98-170 of 16 March 1998)

Any person who fulfils the requirements laid down in Article 21-7 in order to acquire French nationality loses the power to disclaim it where he enlists in French forces.

Any minor born in France of foreign parents who is regularly recruited as a volunteer acquires French nationality at the date of his recruitment.

Art. 21-10

(Act n° 98-170 of 16 March 1998)

The provisions of Articles 21-7 to 21-9 may not apply to children born in France of diplomatic agents and of regular consuls of foreign nationality. Those children have however the power to acquire voluntarily French nationality as provided for in Article 21-11 below.

Art. 21-11

(Act n° 98-170 of 16 March 1998)

A minor child born in France of foreign parents may from the age of sixteen claim French nationality by declaration, in the way laid down in Articles 26 and following where, at the time of his declaration, he has in France his residence and has had his usual residence in France for a continuous or discontinuous period of at least five years, from the age of eleven.

Under the same terms, French nationality may be claimed, on behalf of the minor child born in France of foreign parents, from the age of thirteen and with his personal consent, in which event the requirement of usual residence in France should be fulfilled from the age of eight.

§ 4 - Of the Acquisition of French Nationality by Declaration of Nationality

Art. 21-12

(Act n° 73-42 of 9 Jan. 1973)

A child who was the subject of an ordinary adoption by a person of French nationality may, up to his majority, declare, in the way provided for in Articles 26 and following, that he claims the status of French, if he resides in France at the time of his declaration.

"However, the obligation of residing is dispensed with where the child was adopted by a person of French nationality who does not have his usual residence in France" (Act n° 98-170, 16 March 1998).

May, in the same way, claim French nationality:

1° A child, who, for at least five years, has been sheltered and brought up by a person of French nationality or who, for at least three years, has been entrusted to the Children's aid service (Act n° 2003-1119 of 26 Nov. 2003).;

2° A child sheltered in France and brought up in conditions that allowed him to receive, during five years at least, a French education "from either a public body, or a private body offering the features determined by a decree in Conseil d'État" (Act n° 93-933 of 22 July 1993).

Art. 21-13

(Act n° 73-42 of 9 Jan. 1973)

May claim French nationality "by declaration uttered as provided for in Articles 26 and following" (Act n° 93-933 of 22 July 1993), persons who have enjoyed in a constant way the apparent status of French for the ten years prior to the declaration.

Where the validity of the transactions concluded before the declaration was made conditional on the entitlement of French nationality, that validity may not be objected to on the sole ground that the declarant had not that nationality.

Art. 21-14

(Act n° 93-933 of 22 July 1993)

Persons who have lost French nationality under Article 23-6 or against whom was raised the peremptory exception laid down by Article 30-3 may claim French nationality by declaration uttered as provided for in Articles 26 and following.

They must have kept or acquired patent cultural, professional, economic or family bonds with France, or actually performed military services in a unit of the French army or fought in French or allied armies in time of war.

The surviving spouses of the persons who actually performed military services in a unit of the French army or fought in French or allied armies in time of war may likewise benefit from the provisions of this Article, paragraph 1.

§ 5 - Of the Acquisition of French Nationality by a Decision of the Government

Art. 21-14-1

(Act n° 99-1141 of 29 Dec. 1999)

French nationality may be conferred by decree, on a proposal from the Minister of Defence, to an alien recruited in French armies who was wounded on duty during or on the occasion of an operational action and who makes a request herefor.

Where the party concerned is dead, the same procedure is open to his minor children who, at the day of the death, fulfilled the requirement of residence laid down in Article 22-1, subject to the conditions laid down in paragraph 1.

Art. 21-15

(Act n° 73-42 of 9 Jan. 1973)

"Except in the circumstances referred to in Article 21-14-1" (Act n° 99-1141 of 29 Dec. 1999), the acquisition of French nationality by a decision of the Government results from a naturalisation granted by decree at the request of the alien.

Art. 21-16

(Ord. n° 45-2441 of 19 Oct. 1945)

Nobody may be naturalised unless he has his residence in France at the time of the signature of the decree of naturalisation.

Art. 21-17

(Act n° 93-933 of 22 July 1993)

Subject to the exceptions laid down in Articles 21-18, 21-19 and 21-20, naturalisation may be granted only to an alien who proves an usual residence in France for five years before the submission of the request.

Art. 21-18

(Act n° 73-42 of 9 Jan. 1973)

The probationary period referred to in Article 21-17 shall be reduced to two years:

1° As regards the alien who has successfully completed two years of university education in view of getting a diploma conferred by a French university or establishment of higher education;

2° As regards the alien who gave or can give significant services to France owing to his competences and talents.

Art. 21-19

(Act n° 73-42 of 9 Jan. 1973)

May be naturalised without the requirement of a probationary period:

"1° A minor child who remained an alien although one of his parents acquired French nationality;

2° The spouse and child of age of a person who acquires or acquired French nationality" (Act n° 93-933 of 22 July 1993);

3° [repealed]

4° An alien who actually performed military services in a unit of the French army or who, in time of war, enlisted voluntarily in French or allied armies;

5° A national or former national of territories and States on which France exercised sovereignty, or a protectorate, a mandate or a trusteeship;

6° An alien who gave exceptional services to France or one whose naturalisation is of exceptional interest for France. In this event, the decree of naturalisation may be granted only after taking Conseil d'État's opinion and on the basis of a reasoned report from the competent Minister;

7° (Act 98-170 of 16 March 1998) An alien who obtained the status of refugee in accordance with the Act n° 52-893 of 25 July 1952 establishing a French Office for the protection of refugees and stateless persons.

Art. 21-20

(Act n° 93-933 of 22 July 1993)

May be naturalised without any requirement as to a probationary period a person who belongs to the French cultural and linguistic unit, where he is a national of territories or States

whose official language or one of the official languages is French, either if French is his mother tongue or if he proves school attendance of at least five years at an institution teaching in French.

Art. 21-21

(Act n° 93-933 of 22 July 1993)

French nationality may be conferred by naturalisation on a proposal from the Minister of Foreign Affairs to any French-speaking alien who makes the request thereof and who contributes by his eminent deeds to the influence of France and to the prosperity of its international economic relations.

Art. 21-22

(Act n° 93-933 of 22 July 1993)

With the exception of a minor who may avail himself of the privilege of Article 21-19, paragraph 2 (1°), nobody may be naturalised unless he has reached the age of eighteen.

Art. 21-23

(Act n° 73-42 of 9 Jan. 1973)

Nobody may be naturalised where he is not of good character or has incurred one of the sentences referred to in Article 21-27 of this Code.

However, sentences delivered abroad may be overlooked; in this event the decree that pronounces naturalisation may be enacted only after assent of the Conseil d'État.

Art. 21-24

(Ord. n° 45-2441 of 19 Oct. 1945)

Nobody may be naturalised unless he proves his assimilation into the French community, and specially owing to a sufficient knowledge of the French language, according to his condition and of the rights and duties conferred by French nationality" (Act n° 2003-1119 of 26 Nov. 2003).

Art. 21-24-1

(Act n° 2003-1119 of 26 Nov. 2003)

The requirement of knowledge of the French language shall not apply to political refugees and stateless persons who have resided in France regularly and usually for at least fifteen years and who are over seventy.

Art. 21-25

(Ord. n° 45-2441 of 19 Oct. 1945)

The way of carrying out the checking of assimilation and state of health of an alien awaiting his naturalisation shall be prescribed by decree in Conseil d'État.

Art. 21-25-1

(Act n° 98-170 of 16 March 1998)

The reply of the Government to a request for acquisition of French nationality by naturalisation must be made at the latest within eighteen months after the date when the

acknowledgement of receipt that establishes the delivery of all the documents needed for the completion of a comprehensive file is issued to the applicant.

That period may be extended only once for three months by a reasoned decision.

§ 6 - Provisions Common to some Modes of Acquiring French Nationality

Art. 21-26

(Act n° 73-42 of 9 Jan. 1973)

Is equivalent to a residence in France where that residence is a requirement for the acquiring of French nationality:

1° The residing abroad of an alien who exercises a private or public professional activity on behalf of the French state or of a body whose activity is of special interest for French economy or culture;

2° A residing in those countries in customs union with France which are named by a decree;

3° (Act 98-170 of 16 March 1998) A presence outside France, in time of peace as in time of war, in a regular unit of the French army or for the duties laid down in Book II of the Code of National Service;

4° (Act 98-170 of 16 March 1998) A residing outside France as a volunteer for national service.

The equivalence as to residence which benefits one spouse shall be extended to the other where they actually live together.

Art. 21-27

(Act n° 93-933 of 22 July 1993; Act 98-170 of 16 March 1998))

Nobody may acquire French nationality or be reinstated in that nationality where he has been sentenced either for ordinary or serious offences that constitute a damage to the

fundamental interests of the nation or an act of terrorism or, whatever the offence concerned may be, to a penalty of six months' imprisonment or more without suspension.

(Act n° 93-1417 of 30 Dec. 1993) It shall be likewise for the person who has been subject either to an exclusion order not expressly revoked or repealed or to a banishment of the French territory not fully enforced.

(Act 93-1027 of 24 August 1993) It shall be likewise for the person whose residence in France is irregular with respect to the statutes and conventions concerning the residence of aliens in France .

(Act n° 98-170 of 16 March 1998) The provisions of this Article shall not apply to a minor child who may acquire French nationality under Articles 21-7, 21-11, 21-12 and 22-1,nor to a condemned person who has benefited from a rehabilitation by operation of law or by a judicial rehabilitation in accordance with Article 133-12 of the Penal Code, or the entry of whose sentence has been excluded from the certificate n° 2 of the police record, in accordance with Articles 775-1 and 775-2 of the Code of Criminal Procedure" (Act n° 2003-1119 of 26 Nov. 2003).

Section II - Of the Effects of Acquiring French Nationality

Art. 22

(Act n° 83-1046 of 8 Dec. 1983)

A person who has acquired French nationality enjoys all the rights and is bound to all the duties attached to the status of French, from the day of that acquisition.

Art. 22-1

(Act n° 98-170 of 16 March 1998; Act n° 99-1141 of 29 Dec. 1999)

A minor child, legitimate, illegitimate or who has been the subject of a plenary adoption, one of the parents of whom acquires French nationality, becomes French as of right where he has the same usual residence as that parent, or resides in turn with that parent in the event of separation or divorce.

The provisions of this Article shall not apply to the child of a person who acquires French nationality by a decision of the French government or by declaration of nationality unless his name is mentioned in the decree or the declaration.

Art. 22-2

(Act n° 73-42 of 9 Jan. 1973)

The provisions of the preceding Article shall not apply to a married child.

Art. 22-3

(Act n° 93-933 of 22 July 1993)

However, a child who is French under Article 22-1 and who was not born in France has the power to repudiate that status within six months preceding and twelve months following his coming of age.

He must exercise that power by declaration uttered as provided for in Articles 26 and following.

He may divest himself of that power from the age of sixteen in the same way.

CHAPTER IV - OF LOSS AND FORFEITURE Of, AND OF REINSTATEMENT IN FRENCH NATIONALITY

Section I - Of Loss of French Nationality

Art. 23

(Act n° 73-42 of 9 Jan. 1973)

An adult of French nationality residing usually abroad, who acquires voluntarily a foreign nationality, loses French nationality only where he so declares expressly, in the way provided for in Articles 26 and following of this Title.

Art. 23-1

(Act n° 73-42 of 9 Jan. 1973)

The declaration in view to losing French nationality may be subscribed from the filing of the request for acquiring the foreign nationality and, at the latest, within a period of one year after the date of that acquiring.

Art. 23-2

(Act n° 98-170 of 16 March 1998)

French persons who are under the age of thirty-five years may not subscribe the declaration provided for in Articles 23 and 23-1 above unless they have complied with the duties under Book II of the Code of National Service.

Art. 23-3

(Act n° 98-170 of 16 March 1998)

Loses French nationality a French person who exercises the power to repudiate that status in the circumstances referred to in Articles 18-1, 19-4 and 22-3.

Art. 23-4

(Act n° 73-42 of 9 Jan. 1973)

Loses French nationality a French person, even being a minor, who, having a foreign nationality, is, on his request, authorized by the French Government to lose the status of French.

That authorization shall be granted by decree.

Art. 23-5

(Act n° 73-42 of 9 Jan. 1973)

In the event of a marriage with an alien, the French spouse may repudiate French nationality in accordance with Articles 26 and following, if he or she has acquired the foreign nationality of her or his spouse and the usual residence of the couple is established abroad.

(Act n° 98-170 of 16 March 1998) However, French persons who are under the age of thirty-five may not exercise that power of repudiation unless they have complied with the duties under Book II of the Code of National Service.

Art. 23-6

(Act n° 73-42 of 9 Jan. 1973)

The loss of French nationality may be recorded by judgment where the party concerned, French by parentage, has not the apparent status thereof and never had his usual residence in France, if the ancestors from whom he held French nationality have not had themselves the apparent status of French or residence in France for half a century.

The judgment shall determine the date when French nationality was lost. It may decide that that nationality was lost by the predecessors of the party concerned and that the latter never was French.

Art. 23-7

(Act n° 73-42 of 9 Jan. 1973)

A French person who actually behaves as a national of a foreign country may, where he has the nationality of that country, be declared to have lost French nationality by decree with assent of the Conseil d'Etat.

Art. 23-8

(Act n° 73-42 of 9 Jan. 1973)

Loses French nationality a French person who, filling an employment in a foreign army or public service or in an international organization of which France is not a member, or more generally providing his assistance to it, did not relinquish his employment or stop his assistance notwithstanding the order of the Government.

The party concerned shall be declared, by decree in Conseil d'État, to have lost French nationality unless, within the period prescribed by the order and which may not be shorter than fifteen days or longer than two months, he stops his occupation.

Where the opinion of the Conseil d'État is adverse, the measure provided for in the preceding paragraph may be adopted only by a decree in Council of Ministers.

Art. 23-9

(Act n° 73-42 of 9 Jan. 1973)

Loss of French nationality takes effect:

1° Where Article 23 so provides from the date of acquisition of the foreign nationality;

2° Where Articles 23-3 and 23-5 so provide from the date of the declaration;

3° Where Articles 23-4, 23-7 and 23-8 so provide from the date of the decree;

4° Where Article 23-6 so provides from the day named in the judgment.

Section II - Of Reinstatement in French Nationality

Art. 24

(Act n° 73-42 of 9 Jan. 1973)

Reinstatement in French nationality of persons who prove to have had the status of French shall result from a decree or a declaration in accordance with the distinctions provided for in the Articles below.

Art. 24-1

(Act n° 73-42 of 9 Jan. 1973)

Reinstatement by decree may be obtained at any age and without any requirement as to a probationary period. As to other issues, it shall be subject to the requirements and rules of naturalisation.

Art. 24-2

(Act n° 73-42 of 9 Jan. 1973)

Persons who "have lost French nationality" (Act. n° 98-170 of 16 March 1998) by reason of a marriage with an alien or acquisition of a foreign nationality by an individual decision may, subject to the provisions "of Article 21-27" (Act n° 93-933 of 22 July 1993), be reinstated by a declaration subscribed in France or abroad as provided for in Articles 26 and following.

They must have kept or acquired patent bonds with France, especially of cultural, professional, economic or family nature.

Art. 24-3

(Act n° 93-933 of 22 July 1993)

Reinstatement by decree or declaration is effective with regard to children under eighteen, subject to the conditions under Articles 22-1 and 22-2 of this Title.

Section III - Of Forfeiture of French Nationality

Art. 25

(Act n° 73-42 of 9 Jan. 1973)

An individual who acquired the status of French may be declared by decree adopted after assent of the Conseil d'État to have forfeited French nationality, "save where forfeiture has the effect of making him stateless" (Act n° 98-170 of 16 March 1998):

1° Where he is sentenced for an act characterized as "ordinary or serious offence which constitutes an injury to the fundamental interests of the Nation" (Act n° 93-933 of 22 July 1993) "or for an ordinary or serious offence which constitutes an act of terrorism" (Act n° 96-647 of 22 July 1996);

2° Where he is sentenced for an act characterized as "ordinary or serious offence provided for and punished by Chapter II of Title III of Book IV of the Penal Code" (Act n° 93-933 of 22 July 1993);

3° Where he is sentenced for evading the duties under the Code of National Service;

4° Where he committed acts incompatible with the status of French and detrimental to the interests of France for the benefit of a foreign State;

5 ° [repealed].

Art. 25-1

(Act n° 2003-1119 of 26 Nov. 2003)

Forfeiture shall be incurred only where the facts of which the person concerned is accused and which are referred to in Article 25 occurred before the acquiring of French nationality or within ten years from the date of that acquiring. Act n° 73-42 of 9 Jan. 1973

It may be pronounced only within ten years after the perpetration of those facts.

CHAPTER V - OF ACTS RELATED TO ACQUISITION OR LOSS OF FRENCH NATIONALITY

Section I - Of Declarations of Nationality

Art. 26

(Act n° 93-933 of 22 July 1993; Act 98-170 of 16 March 1998)

Declarations of nationality shall be received by the juge d'instance or by consuls in the form prescribed by decree in Conseil d'État.

An acknowledgment of receipt must be issued after the filing of the documents necessary for proving their admissibility.

Art. 26-1

(Act n° 93-933 of 22 July 1993)

A declaration of nationality must, on pain of nullity, be registered either by the juge d'instance as regards declarations subscribed in France, or by the Minister of Justice as regards declarations subscribed abroad.

Art. 26-2

(Act n° 93-933 of 22 July 1993)

The seats and territorial jurisdiction of the tribunaux d'instance which are empowered to receive and register declarations of French nationality shall be established by decree.

Art. 26-3

(Act n° 93-933 of 22 July 1933; Act n° 98-170 of 16 March 1998)

The Minister or the judge shall refuse to register declarations which do not comply with the statutory requirements.

His reasoned decision shall be notified to the declarant, who may challenge it before the tribunal de grande instance within six months. The claim may be brought personally by a minor from the age of sixteen.

The decision of refusal to register must be taken within six months at the latest after the date when the acknowledgment of receipt which establishes the filing of all the documents necessary for proving the admissibility of the declaration is issued to the declarant.

The period shall be extended to one year as regards declarations subscribed under Article 21-2.

Art. 26-4

(Act n° 93-933 of 22 July 1993; Act n° 98-170 of 16 March 1998)

Within one year following the date when it was made, registration may be challenged by the Government procurator's office*, where the statutory requirements are not met.

In the absence of a refusal to register within the statutory period, a copy of the declaration shall be given to the declarant bearing the mention of the registration.

The registration may still be opposed by the Government procurator's office in the event of lie or fraud within two years after their being detected. The stopping of the community of

living between spouses within twelve months after registration of the declaration under Article 21-2 shall constitute a presumption of fraud.

Art. 26-5

(Act n° 93-933 of 22 July 1993)

Subject to the provisions of Article 23-9, paragraph 2 (1°), declarations of nationality, from the moment that they have been registered, take effect as from the date when they are subscribed.

Section II - Of Administrative Decisions

Art. 27

(Act n° 93-933 of 22 July 1993)

A decision declaring inadmissible, or adjourning or refusing a request for naturalisation or reinstatement by decree, as well as an authorization to lose French nationality must set out its reasons.

Art. 27-1

(Act n° 73-42 of 9 Jan. 1973)

A decree deciding naturalisation or reinstatement, authorization to lose French nationality, loss or forfeiture of that nationality shall be adopted and published in forms prescribed by decree. It may not have any retrospective operation.

Art. 27-2

(Act n° 73-42 of 9 Jan. 1973)

A decree deciding naturalisation or reinstatement may be withdrawn with assent of the Conseil d'État within one year after its publication in the Journal Officiel where the person making the request does not comply with the statutory requirements; where the decision was obtained by lie or fraud, the decree may be withdrawn within two years the detection of fraud.

Art. 27-3

(Act n° 73-42 of 9 Jan. 1973)

A decree deciding loss on one of the grounds provided for in Articles 23-7 and 23-8 or forfeiture of French nationality shall be adopted after the person concerned has been heard or summoned to bring forward his comments.

Section III - Of Mentions on the Registers of Civil Registry

Art. 28

(Act n° 78-731 of 12 July 1978)

A mention of administrative acts and declarations causing acquisition or loss of French nationality or reinstatement therein shall be made in the margin of the record of birth.

(Act n° 98-170 of 16 March 1998) A mention of a first issue of a certificate of French nationality and of adjudicatory decisions of a court relating to that nationality shall likewise be made.

Art. 28-1

(Act n° 98-170 of 16 March 1998)

Mentions relating to nationality provided for in the preceding Article shall be made on copies of records of birth or instruments drawn up as substitutes for them.

Those mentions shall also be made on certificates of birth or on a livret de famille at the request of the parties concerned. However, the mentions of loss, disclaimer, forfeiture of, opposition to the acquisition of French nationality, withdrawal of the decree of naturalisation or reinstatement, or of the judicial decision which has established the alien status, shall be made as of right on certificates of birth and on a livret de famille where a person who previously acquired or was judicially adjudged that nationality, or obtained a certificate of French nationality, has requested their being mentioned on those documents.

CHAPTER VI - OF DISPUTES IN MATTERS OF NATIONALITY

Section I - Of the Jurisdiction of Judicial Courts and the Proceedings therein

Art. 29

(Act n° 73-42 of 9 Jan. 1973)

The civil courts of general jurisdiction shall exercise exclusive jurisdiction over disputes relating to French or foreign nationality of natural persons.

Issues of nationality shall be preliminary before any other administrative or judicial court except criminal courts with a criminal jury.

Art. 29-1

(Act 93-933 of 22 July 1993)

The seats and territorial jurisdiction of the tribunaux de grande instance which are empowered to try controversies relating to French or foreign nationality of natural persons are established by decree.

Art. 29-2

(Act n° 73-42 of 9 Jan. 1973)

The procedure to be followed in matters of nationality and in particular the communication to the Government procurator's office of summons, pleadings and methods of review, is established by the Code of Civil Procedure.

Art. 29-3

(Act n° 73-42 of 9 Jan. 1973)

Everyone is entitled to bring an action for the determination of his having or not the status of French.

The Government procurator's office is likewise entitled with respect to any person. It shall be a necessary defendant in all declaratory actions on nationality. It must be joined to the action whenever an issue of nationality is raised as an interlocutory matter before a court empowered to try it.

Art. 29-4

(Act n° 73-42 of 9 Jan. 1973)

The Government procurator’s office shall have to sue where it is requested by a public service or a third party who raised the plea of national status before a court which stayed judgment under Article 29. The third party plaintiff shall be joined to the action.

Art. 29-5

(Act n° 73-42 of 9 Jan. 1973)

Judgments handed down in matters of French nationality by a court of general jurisdiction have effect even against persons who were not parties nor represented .

However, a party concerned is competent to attack them by means of a third party application for rehearing provided that he joins the Government procurator’s office to the action.

Section II - Of the Proof of Nationality before Judicial Courts

Art. 30

(Act n° 73-42 of 9 Jan. 1973)

The burden of proof in matters of French nationality lies on the person whose nationality is in dispute.

However, this burden lies on him who challenges the status of French of a person who holds a certificate of French nationality issued as provided for in Articles 31 and following.

Art. 30-1

(Ord. n° 45-2441 of 19 Oct. 1945)

Where French nationality is granted or acquired in another way than declaration, naturalisation, reinstatement or annexation of territories, proof of it may be made only by establishing the existence of all the statutory requirements.

Art. 30-2

(Act n° 61-1408 of 22 Dec. 1961)

However, where French nationality may flow only from parentage, it shall be deemed established, saving proof to the contrary, if the person concerned and the parent who was likely to transmit it to him have in a constant way enjoyed the apparent status of French.

(Act n° 93-933 of 22 July 1993) French nationality of persons born in Mayotte, of age on 1 January 1994, shall be alternatively deemed established if those persons have in a constant way enjoyed the apparent status of French.

Art. 30-3

(Act n° 61-1408 of 22 Dec. 1961)

Where a person usually resides or resided in a foreign country, in which the ancestors from whom he holds nationality by parentage have settled for more than half a century, that person shall not be allowed to prove that he has French nationality by parentage if himself or the parent who was likely to transmit it to him have not enjoyed the apparent status of French.

In that event, the court shall have to record the loss of French nationality under Article 23-6.

Art. 30-4

(Act n° 73-42 of 9 Jan. 1973)

Apart from loss or forfeiture of French nationality, proof of the alien status of a person may only be established by evidencing that the party concerned does not fulfil any of the statutory requirements for having the status of French.

Section III - Of Certificates of French Nationality

Art. 31

(Act n° 95-125 of 8 Feb. 1995)

The chief clerk of a tribunal d'instance shall alone have the capacity to issue a certificate of French nationality to a person who establishes that he has that nationality.

Art. 31-1

(Act n° 93-933 of 22 July 1993)

The seats and territorial jurisdiction of the tribunaux d'instance which are empowered to issue certificates of nationality shall be established by decree.

Art. 31-2

(Act n° 73-42 of 9 Jan. 1973)

A certificate of nationality shall point out with reference to Chapters II, III, IV and VII of this Title the statutory provision under which the party concerned has the status of French as well as the documents which allowed its being drawn up. It shall prevail until evidence contrary to it.

(Act n° 95-125 of 8 Feb. 1995) For the issuing of a certificate of nationality, the chief clerk of a tribunal d'instance may, failing other elements, presume that the records of civil status drawn up abroad and presented to him produce the effects that French law would have attributed to them.

Art. 31-3

(Act n° 95-125 of 8 Feb. 1995)

Where the chief clerk of a tribunal d'instance refuses to issue a certificate of nationality, the party concerned may refer the matter to the Minister of Justice who shall decide whether there is a case for the performance of that issuing.

CHAPTER VII - OF THE EFFECTS ON FRENCH NATIONALITY OF TRANSFERS OF SOVEREIGNTY RELATING TO CERTAIN TERRITORIES

Art. 32

(Act n° 73-42 of 9 Jan. 1973)

French persons natives of the territory of the French Republic, as it was constituted on the 28 July 1960, and who were domiciled on the day of its accession to independence on the territory of a State that had previously the status of an overseas territory of the French Republic, have kept French nationality.

It shall be the same as to the spouses, widows and widowers and descendants of the said persons.

Art. 32-1

(Act n° 73-42 of 9 Jan. 1973)

French persons of civil status of general law who were domiciled in Algeria on the date of the official announcement of the results of the poll for self- determination keep French nationality whatever their situation with respect to Algerian nationality may be.

Art. 32-2

(Act n° 73-42 of 9 Jan. 1973)

The French nationality of persons of civil status of general law who were born in Algeria before the 22 July 1962 shall be deemed established, on the terms of Article 30-2, where those persons have enjoyed in a constant way the apparent status of French.

Art. 32-3

(Act n° 73-42 of 9 Jan. 1973)

Every French person who, at the date of its independence, was domiciled on the territory of a State that had previously the status of overseas département or territory of the Republic keeps his nationality as of right where no other nationality was granted to him by the law of that State.

Likewise, the children of persons who benefit from the provisions of the preceding paragraph, minors under eighteen at the date of the accession to independence of the territory where their parents were domiciled, keep French nationality as of right.

Art. 32-4

(Act n° 73-42 of 9 Jan. 1973)

Former members of the Parliament of the Republic, of the Assembly of the French Union and of the Economic Council who have lost French nationality and acquired a foreign nationality under a general provision may be reinstated in French nationality by a mere declaration where they have established their domiciles in France.

The same power is granted to their spouse, widower or widow and their children.

Art. 32-5

(Act n° 93-933 of 22 July 1993)

The declaration of reinstatement provided for in the preceding article may be subscribed by the parties concerned, in accordance with Article 26 and following, from the moment they

have reached the age of eighteen; it may not be made through an agent. It has effect with regard to minor children on the terms of Articles 22-1 and 22-2.

CHAPTER VIII - SPECIAL PROVISIONS REGARDING OVERSEAS TERRITORIES

Art. 33

(Act n° 73-42 of 9 Jan. 1973)

For the implementation of this Code [Title] in overseas territories:

1° The words "tribunal de grande instance" shall each time be replaced by the words "tribunal de première instance";

2° [repealed].

Art. 33-1

(Act n° 93-933 of 22 July 1993)

Notwithstanding Article 26, the declaration shall be received by the president of the tribunal de première instance or by the judge in charge of the section on detachment.

Art. 33-2

(Act n° 93-933 of 22 July 1993)

Notwithstanding Article 31, the president of the tribunal de première instance or the judge in charge of the section on detachment has alone the capacity to issue a certificate of French nationality to a person who establishes that he has that nationality.

TITLE II

OF RECORDS OF CIVIL STATUS

CHAPTER I - GENERAL PROVISIONS

Art. 34

(Act of 22 Oct. 1922)

Records of civil status shall state the year, day and time when they were received, the first names and name of the officer of civil status, the first names, names, occupations and domiciles of all persons named therein.

The dates and places of birth:

a) Of the father and mother in the records of birth and of acknowledgement;

b) Of the child in the records of acknowledgement;

c) Of the spouses in the records of marriage; and

d) Of the deceased in the records of death,

shall be indicated when known. Otherwise the age of those persons shall be designated by their number of years as must be, in all cases, the ages of the declarants. As to the witnesses, only their status of adult shall be indicated.

Art. 35

Officers of civil status may insert nothing in the records they receive, by way of a note or of whatever wording, beyond what must be declared by the declarants.

Art. 36

Where the parties concerned are not obliged to appear in person, they may be represented by an agent with a special and authentic power.

Art. 37

(Act of 7 Dec. 1897)

Witnesses appearing in connection with records of civil status shall be at least of eighteen years of age, relatives or not, without distinction of sex; they shall be selected by the parties concerned.

[repealed]

Art. 38

(Ord. n° 58-779 of 23 august 1958)

The officer of civil status shall read the records to the appearing parties or their agents, and to the witnesses; he shall invite them to take direct cognisance of them before signing them.

It shall be mentioned on the records that these formalities have been complied with.

Art. 39

Those records shall be signed by the officer of civil status, the appearing parties and witnesses; or mention shall be made of the cause preventing the appearing parties or witnesses from signing.

Art. 40 to 45 [repealed]

Art. 46

Where no registers have existed or where they have been lost, proof of them may be received by documents as well as by witnesses; and in that event, marriages, births and deaths may be proved by books and papers emanating from deceased fathers and mothers as well as by witnesses.

Art. 47

(Act n° 2003-1119 of 26 Nov. 2003)

Faith must be given to records of civil status of French persons and aliens made in a foreign country and drawn up in the forms in use in that country, unless other records or documents possessed, external data or elements drawn from the record itself establish that the record is irregular, forged or that the facts declared therein do not square with truth.

In case of doubt, the service before which a request for the drawing up, registration or issuing of a record or of a document is brought, shall delay the request and give notice to the person concerned that he may, within two months, refer the matter to the Government procurator in Nantes in order that the authenticity of the record be checked.

Where he considers groundless the request for checking made to him, the Government procurator shall give notice of it to the person concerned and the service within one month.

Where he shares the doubts of the service, the Government procurator in Nantes shall initiate any useful investigation, especially by referring the matter to the proper consular authorities, within a period which may not exceed six months, renewable one month for the requirements of the inquiry. He shall inform the person concerned and the service as soon as possible of the results of the inquiry.

Upon presentation of the results of the investigations carried out, the Government procurator may refer the matter to the tribunal de grande instance in Nantes in order that it give judgment about the validity of the record after having ordered, where appropriate, any examination proceedings it deems advisable.

Art. 48

(Act n° 93-22 of 8 Jan. 1993)

A record of civil status of French persons in a foreign State is valid where it was received, in accordance with French law, by diplomatic or consular agents.

(Act of 8 June 1893) A duplicate of the registers of civil status held by these agents shall be sent at the end of each year to the Ministry of Foreign Affairs which shall keep them and may deliver certificates from them.

Art. 49

(Act of 17 Aug. 1897; Act of 10 March 1932)

Whenever the mention of a record relating to civil status must be made in the margin of a record already drawn up or registered, it shall be made by the officer of his own motion.

The officer of civil status who has drawn up or registered the record that occasions the mention shall effect that mention within three days on the registers he keeps and, if the duplicate of the register on which the mention is to be effected is at the court registrar's office, he shall send a notice to the Government procurator of his arrondissement.

Where the record in the margin of which the mention is to be effected was drawn up or registered in another commune, the notice shall be sent, within three days, to the officer of civil status of that commune and the latter shall notify at once the Government procurator of his arrondissement if the duplicate of the register is at the court registrar's office.

(Act n° 93-22 of 8 Jan. 1993) Where the record in the margin of which a mention is to be effected was drawn up or registered abroad, the officer of civil status who drew up or registered the record that occasions the mention shall give notice of it, within three days, to the Minister of Foreign Affairs.

Art. 50

(Act n° 46-2154 of 7 Oct. 1946; Act n° 56-780 of 4 Aug. 1956)

An infringement of the preceding Articles on the part of the officials therein named shall be prosecuted before the tribunal de grande instance and punished with a fine of 20 to 200 francs (3 to 30 €).

Art. 51

A custodian of registers shall be civilly liable for the alterations that occur in them, subject to his remedy, if there is occasion, against the authors of those alterations.

Art. 52

An alteration, a forgery in records of civil status, an inscription of those records on a loose leaf and otherwise than on the registers designed for that purpose, shall give rise to damages to the parties, without prejudice to penalties provided for in the Penal Code.

Art. 53

The Government procurator at the tribunal de grande instance shall verify the state of the registers when they are deposited at the court registrar's office; he shall draw up a memorandum of verification, denounce minor and ordinary offences committed by officers of civil status and call for their being sentenced to fines.

Art. 54

Whenever a tribunal de grande instance has jurisdiction over records of civil status, the parties concerned may attack the judgment.

CHAPTER II - OF RECORDS OF BIRTH

Section I - Of Declarations of Birth

(Act n° 93-22, 8 Jan. 1993)

Art. 55

(Act of 20 Nov. 1919)

Declarations of birth shall be made within three days of the delivery, to the local officer of civil status.

Where a birth has not been declared within the statutory period, the officer of civil status may only record it in his registers under a judgment rendered by the court of the arrondissement in which the child was born, and a summary mention shall be made in the margin at the date of the birth. Where the place of birth is unknown, the court having jurisdiction shall be the one of the residence of the applicant.

(Act n° 93-22 of 8 Jan. 1993) In foreign countries, declarations to diplomatic or consular agents must be made within fifteen days of the delivery. That period may however be extended by decree in some consular districts.

Art. 56

The birth of a child shall be declared by the father, or, in absence of the father, by the doctors of medicine or surgery, midwives, health officials or other persons present at the delivery; and, where the mother has given birth outside her domicile, by the person at whose place she has given birth.

(Act of 7 Feb. 1924) Records of birth shall be drawn up at once.

Art. 57

(Act of 7 Feb. 1924)

A record of birth shall indicate the day, the time and the place of birth, the sex of the child ["the first names given to him, the family name followed if there is occasion by the mention of the joint declaration of his parents as regards the choice made," (Act n° 2002-304 of 4 March 2002, Act n° 2003-516 of 18 June 20031] and, the first names, names, ages, occupations and domiciles of the father and mother, and if there is occasion, those of the applicant. If the father and mother of an illegitimate child, or one of them, are not indicated to the officer of civil status, nothing may be mentioned on the registers on this subject.

(Act n° 93-22 of 8 Jan. 1993) The first names of the child shall be chosen by his father and mother. "A woman who asked to keep her identity secret at the time of the delivery may make known the first names she desires to be given to the child. Otherwise, or where his parents are unknown, the officer of civil status chooses three first names the last of which shall take the place of a patronymic [replaced by "family name" (Act n° 2002-304 of 4 March 20021] to the child " (Act n° 96-604 of 5 July 1996). The officer of civil status shall write down at once the chosen first names on the record of birth. Any first name entered on the record of birth may be chosen as the usual first name.

Where these first names or one of them, alone or combined with the other first names or the name, appear to him to be contrary to the welfare of the child or to the rights of third parties to the protection of their patronymics [replaced by "family names" (Act n° 2002-304 of 4 March 20021)], the officer of civil status shall give notice thereof to the Government procurator* without delay. The latter may refer the matter to the family causes judge*.

Where the judge considers that the first name is not consonant with the welfare of the child or interferes with the rights of third parties to the protection of their patronymics [replaced by "family names" (Act n° 2002-304 of 4 March 20011], he shall order its removal from the registers of civil status. Where appropriate, he shall give the child another first name which he himself fixes in the absence of a new choice by the parents that be consonant with the interests aforesaid. A mention of the judgment shall be entered in the margin of the records of civil status of the child.

1 Shall come into force on 1 Jan. 2005

Art. 57-1

(Act n° 96-604 of 5 July 1996)

Where the officer of civil status of the place of birth of an illegitimate child enters a mention of the acknowledgement of that child in the margin of his record of birth, he shall give notice to the other parent by a registered letter with request for advice of delivery.

If that parent cannot be informed, the officer of civil status shall give notice to the Government procurator who shall have all the necessary steps taken.

Art. 58

(Ord. n° 58-779 of 23 Aug. 1958)

A person who may have found a new-born child is required to make declaration of it to the officer of civil status of the place of discovery. Where he does not consent to take charge of the child, he shall hand him, with the clothing and other effects found with him, to the officer of civil status.

A detailed memorandum shall be drawn up which, besides the indications provided for by Article 34 of this Code, shall state the date, time, place and circumstances of the discovery, the apparent age and the sex of the child, any peculiarities which may contribute to his identification as well as the authority or person to whom he is entrusted. That memorandum shall be entered as of its date on the registers of civil status.

Following and separately from this memorandum, the officer of civil status shall draw up a record that shall take the place of a record of birth. Besides the indications provided for by Article 34, that record shall state the sex of the child as well as the first names and name that are given to him; it shall fix a date of birth that may tally with his apparent age and designate as place of birth the commune where the child was discovered.

Similar records shall be drawn up, on declaration of the Children's aid services, for children placed under their guardianship and deprived of a known record of birth or for whom the secret as to birth has been claimed.

Copies and certificates of the memorandum of discovery or of the interim record of birth shall be issued on the terms and in accordance with the distinctions under Article 57 of this Code.

Where the record of birth of the child is found or the birth is judicially declared, the memorandum of discovery and the interim record of birth shall be nullified at the request of the Government procurator or of the parties concerned.

Art. 59

(Act of 7 Feb. 1924)

In case of birth during a sea voyage, a record shall be drawn up within three days of the delivery, upon declaration of the father if he is on board.

(Act of 8 June 1893) Where the birth takes place during a break in port, a record shall be drawn up under the same terms if there is an impossibility to communicate with the shore or, if in a foreign country, there is no French diplomatic or consular agent vested with the functions of an officer of civil status.

That record shall be drawn up, to wit: on vessels of the State, by the officer of the Navy commissariat or, in his absence, by the captain or one who fulfils his functions; and on other ships by the captain, master or skipper, or one who fulfils his functions.

Mention shall be made of the circumstances among the ones above provided in which the record was drawn up.

The record shall be entered at the end of the list of the crew.

Section II - Of Changes of First Names and Name

(Act n° 93-22 of 8 Jan. 1993)

Art. 60

A person who establishes a lawful interest may apply for a change of his first name. The application is brought before the family causes judge on request of the party concerned or, where the latter is a person under a disability, on request of his statutory representative. An adjunction or suppression of first names may be likewise decided.

Where the child is over thirteen his personal consent is required.

Art. 61

A person who establishes a lawful interest may apply for a change of his name.

The application for a change of name may be made for the purpose of preventing the extinguishment of the name borne by an ancestor or a collateral of the applicant up to the fourth degree.

The change of name shall be authorized by decree.

Art. 61-1

A person concerned may challenge before the Conseil d'État the decree establishing a change of name within two months after its publication in the Journal Officiel.

A decree establishing a change of name takes effect, where there is no challenge, at the end of the period within which the challenge is admissible or, where there is a challenge, after its dismissal.

Art. 61-2

A change of name extends as of right to the children of the beneficiary where they are under thirteen.

Art. 61-3

A change of name of a child over thirteen requires his personal consent where this change does not result from the establishing or modifying a parental bond..

However, the establishing or modifying a parental bond implies the change of adult children's patronymic [replaced by "family name" (Act n° 2002-304 of 4 March 20021)] only subject to their consent.

1 Shall come into force on 1 Jan. 2005

Art. 61-4

Mentions of the judgments of changes of first names and name shall be entered in the margin of the records of civil status of the party concerned and, where appropriate, of those of his or her spouse and his or her children.

The provisions of Articles 100 and 101 shall apply to modifications of first names and name.

Section III - Of Record of Acknowledgement of an Illegitimate Child

(Act n° 93-22 of 8 Jan. 1993)

Art. 62

A record of acknowledgement of an illegitimate child shall indicate the first names, name, date of birth or, failing which, age, place of birth and domicile of the maker of the acknowledgement

It shall indicate the date and place of birth, the sex and first names of the child or, failing which, all appropriate information concerning the birth, subject to the provisions of Article 341-1.

A record of acknowledgement shall be entered at its date on the registers of civil status.

Only the mentions provided for in the first paragraph may be entered in the margin of the record of birth, if there is one.

In the circumstances referred to in Article 59, the declaration of acknowledgement may be received by the instrumentary officers named in that Article and in the forms therein indicated.

(Act n° 2002-305 of 4 March 2002) When a record of acknowledgement is established, Articles 371-1 and 371-2 must be read to his or her maker.

Art. 62-1

(Act n° 2002-93 of 22 Jan. 2002)

Where the registration of a paternal acknowledgement proves impossible because of secret as to her identity put forward by the mother, the father may give notice of it to the Government procurator. The latter shall undertake the search of the date and place of establishment of the child's record of birth.

CHAPTER III - OF RECORDS OF MARRIAGE

Art. 63

(Act of 8 April 1927)

Before the celebration of a marriage, an officer of civil status shall give public notice of it by way of a bill stuck up on the door of the town hall. That notice shall state the first names, names, occupations, domiciles and residences of the future spouses, as well as the place where the marriage is to be celebrated.

Irrespective of the application of the provisions of Article 170, an officer of civil status may proceed to the public notice provided for in paragraph 1, or, in case of an exemption from public notice, to the celebration of the marriage, only after:

- the handing over by each of the future spouses of a medical certificate dating from less than two months, that attests that the person concerned was examined for purposes of marriage, to the exclusion of any other indication;

- hearing the future spouses jointly, except in case of impossibility or where it appears, upon examination of the file, that said hearing is not necessary with respect to Article 146. If he deems it necessary, the officer of civil status may also require to have a separate talk with one or the other of the future spouses.

An officer of civil status who does not comply with the prescriptions of the preceding paragraphs shall be prosecuted before the tribunal de grande instance and punished by a fine "from 20 to 200 francs" (3 to 30 €) (Act n° 56-780 of 4 Aug. 1956).

Art. 64

(Act of 8 April 1927)

The bill provided for in the preceding Article shall remain stuck up at the door of the town hall for ten days.

The marriage may not be celebrated before the tenth day after and exclusive of that of notice.

Where the bill-sticking is interrupted before the expiration of that period, a mention of it shall be made on the bill that has ceased to be stuck up at the door of the town hall.

Art. 65

(Act of 21 June 1907)

Where the marriage has not been celebrated within one year after the expiry of the period of notice, it may no longer be celebrated until a new public notice has been given in the form provided above.

Art 66

Instruments of formal objection to the marriage must be signed on the original and a copy by the opposing parties or their agents with special and authentic powers; they must be served, with a copy of the power, on the persons or at the domiciles of the parties and on the officer of civil status, who shall stamp the original.

Art. 67

(Act of 8 April 1927)

The officer of civil status shall make, without delay, a summary mention of the formal objections in the register of marriages; he shall also make, in the margin of the entry of those formal objections, a mention of judgments or instruments of withdrawals of which office copies have been delivered to him.

Art. 68

(Act. n° 46-2154 of 7 Oct. 1946)

In the event of a formal objection, the officer of civil status may not celebrate the marriage before a withdrawal has been delivered to him, on pain of fine of 30 francs (4,5 €) and subject to all damages.

Art. 69

(Act of 9 Aug. 1919)

Where public notice has been given in several communes, the officer of civil status of each commune shall forward without delay to the one who is to celebrate the marriage a certificate stating that there is no formal objection.

Art. 70

(Act of 2 Feb. 1933)

The office copy of the record of birth delivered by each one of the future spouses to the officer of civil status who is to celebrate their marriage shall comply with Article 57, last paragraph, of the Civil Code with, if there is occasion, indication of the married status of his father and mother or, where the future spouse is a minor, indication of the acknowledgement of which he or she was the subject.

(Act of 11 July 1929) That instrument must not have been issued more than three months before where it was issued in France, and more than six months before where it was issued in a colony or a consulate.

Art. 71

(Act of 11 July 1929)

A future spouse who would be unable to obtain that instrument may replace it by producing an affidavit issued by the judge of the tribunal d'instance of the place of his birth or of his domicile.

An affidavit shall contain a declaration made by three witnesses, of either sex, relatives or not, of the first names, name, occupation and domicile of the future spouse and of those of his father and mother, when known; the place and, as far as possible, the period of his birth and the

causes that prevent the intrument from being produced. The witnesses shall sign the affidavit with the judge of the tribunal d'instance; and if any of them cannot or does not know how to sign, mention shall be made of it.

Art. 72

(Act n° 72-3 of 3 Jan. 1972)

Neither an affidavit nor a refusal to issue it may be subject to review.

Art. 73

(Act of 9 Aug. 1919)

An authentic instrument of consent of the father and mother, or grandfathers and grandmothers or, failing them, of the family council shall contain the first names, names, occupation and domiciles of the future spouses and of all those who concurred in the instrument, as well as their degree of consanguinity.

(Act of 28 Feb. 1922) Except in the case provided for in Article 159 of the Civil Code, that instrument of consent shall be drawn up either by a notaire or by the officer of civil status of the domicile or residence of the ascendant and, abroad, by French diplomatic or consular agents. Where it is drawn up by an officer of civil status, it must be legalized only when it is to be produced before foreign authorities, save as otherwise provided in international conventions.

Art. 74

(Act of 21 June 1907)

A marriage must be celebrated in the commune where one of the spouses has his or her domicile or residence established by a continuous habitation of at least one month at the date of the public notice provided for by law.

Art. 75

(Act n° 66-359 of 9 June 1966)

On the day specified by the parties, after the period of public notice, the officer of civil status, at the town hall, in the presence of two witnesses at least or four at the most, relative or not of the parties, shall read Articles 212, 213 (paragraphs 1 and 2), 214 (paragraph 1) and 315 (paragraph 1) of this Code to the future spouses. "Article 371-1 must also be read" (Act n° 2002-305 of 4 March 2002).

(Act of 9 Aug. 1919) However, in case of serious impediment, the Government procurator of the place of marriage may require the officer of civil status to betake himself to the domicile or residence of one of the parties to celebrate the marriage. In case of imminent danger of death of one of the future spouses, the officer of civil status may betake himself there before any requirement or authorization of the Government procurator, to whom he shall then notify as soon as possible of the necessity of that celebration outside the town hall.

Mention shall be made of this in the record of marriage.

The officer of civil status shall ask the future spouses and, if they are minors, their ascendants present at the celebration and authorizing the marriage, to declare whether an ante-nuptial agreement has been made and, in the affirmative, the date of that contract and the name and place of residence of the notaire who received it.

(Act of 2 Feb. 1933) Where the documents produced by one of the future spouses do not accord with one another as to the first names or the spelling of the names, he shall ask the one whom they concern and, if the latter is a minor, his closest ascendants present at the celebration, to declare that the variance results from an omission or a mistake.

He shall receive from each party, one after the other, the declaration that they wish to take each other as husband and wife; he shall pronounce, in the name of the law, that they are united by marriage, and he shall draw up a record of it at once.

Art. 76

(Act of 4 Feb. 1928)

A record of marriage shall state:

1° The first names, names, occupations, ages, dates and places of birth, domiciles and residences of the spouses;

2° The first names, names, occupations and domiciles of the fathers and mothers;

3° The consent of the fathers and mothers, grandfathers and grandmothers and that of the family council where, they are required;

4° The first names and name of the previous spouse of each spouse;

5° [repealed]

6° The declaration of the contracting parties that they take each other for spouse, and the pronouncement of their being united by the officer of civil status;

7° The first names, names, occupations, domiciles of the witnesses and their capacity as adults;

8° (Act of 10 July 1850) The declaration, made upon the question prescribed by the preceding Article, that an ante-nuptial agreement was made or not and, as far as possible, the date of the agreement if any, as well as the name and place of residence of the notaire who received it; the whole on pain against the officer of civil status of the fine specified in Article 50;

Where the declaration was omitted or erroneous, the correction of the record, as to the omission or mistake, may be requested by the Government procurator, without prejudice to the rights of the parties concerned, under Article 99.

9° (Act n° 97-987 of 28 Oct. 1997) If there is occasion, the declaration that an instrument of choice of the applicable law was made in accordance with The Hague Convention of 14 March 1978 on the law applicable to matrimonial regimes, as well as the date and place of signature of that instrument and, where appropriate, the name and capacity of the person who drew it.

(Ord. n° 59-71 of 7 Jan. 1959) In the margin of the record of birth of each spouse, mention shall be made of the celebration of the marriage and of the name of the spouse.

CHAPTER IV - OF RECORDS OF DEATH

Art. 77 [repealed]

Art. 78

(Act of 7 Feb. 1924)

A record of death must be drawn up by the officer of civil status of the commune where the death took place, upon the declaration of a relative of the deceased or of a person possessing the most reliable and complete information that is possible as to the civil status of the deceased.

Art. 79

(Act of 7 Feb. 1924)

A record of death shall state:

1° The day, time and place of the death;

2° The first names, name, date and place of birth, occupation and domicile of the deceased person;

3° The first names, names, professions and domiciles of his father and mother;

4° The first names and name of the other spouse, where the deceased person was married, widowed or divorced;

5° The first names, name, age, occupation and domicile of the declarant and, if there is occasion, his degree of consanguinity to the deceased person.

All of which in so far as may be known.

(Ord. of 29 March 1945) Mention of the death must be made in the margin of the record of birth of the deceased person.

Art. 79-1

(Act n° 93-22 of 8 Jan. 1993)

Where a child is dead before his birth was declared to the civil registry, the officer of civil status shall draw up a record of birth and a record of death upon exhibition of a medical certificate stating that the child was born alive and viable and specifying the days and times of his birth and death.

In the absence of the medical certificate provided for in the preceding paragraph, the officer of civil status shall draw up a record of a lifeless child. That record shall be entered at its date in the registers of death and shall state the day, time, and place of the delivery, the first

names and names, dates and places of birth, occupations and domiciles of the father and mother and, if there is occasion, those of the declarant. The record drawn up shall be without prejudice to knowing whether the child has lived or not; any party concerned may refer the matter to the judgment of the tribunal de grande instance.

Art. 80

(Act of 20 Nov. 1919)

Where the death occurred elsewhere than in the commune where the deceased was domiciled, the officer of civil status shall, within the shortest possible time, send to the officer of civil status of the deceased's last domicile, an office copy of that record which shall be immediately entered in the registers. "This provision shall not apply to cities divided into arrondissements, when the death occurred in an arrondissement other than the one where the deceased was domiciled" (Ord. n° 58-779 of 23 Aug. 1958).

"In case of death in hospitals or health units, naval or civil hospitals or other public bodies" (Act n° 93-22 of 8 Jan. 1993), the directors, managers or heads of those hospitals or bodies shall give notice of it to the officer of civil status or to the person who fulfils his duties, within twenty-four hours.

The latter shall call there to ascertain the death and draw up a record of it, in accordance with the preceding Article, upon the declarations made to him and according to the information obtained by him.

There shall be kept in said hospitals, units and bodies, a register in which those declarations and information shall be entered.

Art. 81

Where there are marks or indications of violent death, or other circumstances which give rise to suspicion thereof, the burial may not take place until a police officer has, with the assistance of a doctor in medicine or surgery, drawn up a memorandum of the condition of the corpse and of the circumstances relating to it, as well as of the information he could collect as to the first names, name, age, occupation, place of birth and domicile of the deceased person.

Art. 82

The police officer shall forward at once, to the officer of civil status of the place where the person died, all the information stated in his memorandum, according to which the record of death shall be drawn up.

The officer of civil status shall send an office copy of it to the officer of the domicile of the deceased person, if it is known: that office copy shall be entered in the registers.

Art. 83 [repealed by implication by Act n° 81-908 of 9 Oct. 1981, which has abolished the death penalty]

Art. 84

In case of death in a prison or centre of confinement or detention, a notice of it shall be given at once by the keepers or warders to the officer of civil status who shall betake himself thereto as provided for in Article 80 and shall draw up the record of death.

Art. 85

In all cases of violent death or death in prisons and centres of confinement [repealed by implication], those circumstances shall not be mentioned in the registers and the records of death shall simply be drawn up in the form prescribed by Article 79.

Art. 86

(Act of 7 Feb. 1924)

In case of death during a sea voyage and under the circumstances provided for in Article 59, a record must be drawn up within twenty-four hours by the instrumentary officers named in that Article and in the forms therein indicated.

[repealed]

[repealed]

Art. 87

(Ord. n° 58-779 of 23 Aug. 1958)

Where the body of a deceased person is found and can be identified, a record of death shall be drawn up by the officer of civil status of the presumed place of death, whatever the time elapsed between the death and the discovery of the body may be.

` Where the deceased cannot be identified, the record of death shall include the most complete description of him; in the event of later identification, the record shall be rectified in the way provided for in Article 99 of this Code.

Art. 88

(Ord. n° 58-779 of 23 Aug. 1958)

May be judicially declared, on application of the Government procurator or the parties concerned, the death of a French person who has disappeared in or outside France, in circumstances likely to imperil his life, where his body could not be found.

On the same terms, may be judicially declared the death of an alien or stateless person who disappeared either on a territory under the authority of France or aboard a French ship or aircraft, or even abroad where he had his domicile or usual residence in France.

The procedure of judicial declaration of death shall likewise apply where the death is certain but the body could not be found.

Art. 89

(Ord. n° 58-779 of 23 Aug. 1958)

The application must be lodged at the tribunal de grande instance of the place of death or disappearance where it occurred on a territory under the authority of France, otherwise at the court of the domicile or last residence of the deceased or disappeared person or, failing which, at the court of the port of registry of the aircraft or the ship that carried him. In default of any other, the tribunal de grande instance of Paris shall have jurisdiction.

Where several persons disappeared in the course of the same event, a joint application may be lodged at the court of the place of the disappearance, at that of the port of registry or, failing them, at the tribunal de grande instance of Paris.

Art. 90

(Ord. n° 58-779 of 23 Aug. 1958)

Where it is not made by the Government procurator, the application must be forwarded through the latter to the court. The case shall be investigated and adjudged in chambers. The assistance of a counsel is not required and all proceedings as well as the office copies and certificates thereof, shall be exempt of stamp duties and registered gratis.

Where the court is of opinion that the death is not adequately proved, it may order any step in view to further information and request in particular an administrative enquiry on the circumstances of the disappearance.

Where the death is declared, its date shall be fixed by taking into account the presumptions drawn from the circumstances of the case and, failing them, on the day of the disappearance. That date may never be undetermined.

Art. 91

(Ord. n° 58-779 of 23 Aug. 1958)

The operative part of a declaratory judgment of death must be recorded on the registers of civil status of the actual or presumed place of death and, where appropriate, on those of the last domicile of the deceased.

Mention of the recording shall be made in the margin of the registers at the date of the death. In case of a joint judgment, individual certificates shall be forwarded to the officers of civil status of the last domiciles of the persons who have disappeared, for purpose of their being entered.

Declaratory judgments of death shall take the place of records of death and are enforceable against third parties who may only have them rectified in accordance with Article 99 of this Code.

Art. 92

(Ord. n° 58-779 of 23 Aug. 1958)

Where the person whose death was judicially declared reappears after a declaratory judgment, the Government procurator or any party concerned may apply for the annulment of the judgment in the forms provided for in Articles 89 and following.

(Act n° 77-1447 of 28 Dec. 1977) The provisions of Articles 130, 131 and 132 shall apply where required.

Mention of the annulment of the declaratory judgment shall be made in the margin of its recording.

CHAPTER V - OF RECORDS OF CIVIL STATUS CONCERNING SOLDIERS AND MARINERS IN SOME SPECIAL CIRCUMSTANCES

Art. 93

(Ord. n° 58-779 of 23 Aug. 1958)

Records of civil status concerning soldiers and mariners of the State shall be drawn up as specified in the preceding Chapters.

However, outside France and in case of war, expedition, operation for the keeping of order and pacification or quartering of French troops in foreign territories, for occupation or under intergovernmental agreements, those records may be received likewise by military officers of civil status, named by an order of the Minister of the Armed Forces. Those officers of civil status are also competent with regard to non-military persons where the provisions of the preceding Chapters cannot be applied.

In metropolitan France, the officers of civil status referred to above may receive records concerning soldiers and non-military persons in the parts of the territory where, by reason of mobilization or siege, the municipal civil registry is no longer regularly ensured.

Declarations of birth in the armed forces shall be made within ten days following the delivery.

Records of death may be drawn up in the armed forces notwithstanding Article 77 above [deleted] although the officer of civil status could not betake himself to the deceased person and, notwithstanding Article 78, they may be drawn up only on the attestation of two declarants.

Art 94 [deleted]

Art. 95

(Act n° 57-1232 of 28 Nov. 1957)

Where Article 93, paragraphs 2 and 3, so provides, records of civil status shall be drawn up on a special register, the keeping and preservation of which shall be regulated by a joint order of the Minister of National Defence and Armed Forces and the Minister of Ex-Servicemen and Victims of War.

Art. 96

(Act n° 57-1232 of 28 Nov. 1957)

Where a marriage is celebrated in one of the cases provided for in Article 93, paragraphs 2 and 3, public notice shall be given, to the extent that circumstances so permit, at the place of the last domicile of the future husband; they shall also be made in the unit to which the party concerned belongs, in the way provided for in an order of the Minister of National Defence and Armed Forces .

Art. 97

(Act n° 57-1232 of 28 Nov. 1957)

Records of death received by military authorities in all cases provided for in Article 93 above, or by civilian authorities as regards members of the armed forces, civilians participating in their action, in duty covered by orders, or persons employed in the armies' train, may be

subject to administrative rectification in the way provided for in a decree, within periods and in territories where the military authority is entitled, by said Article 93, to receive those records should the occasion arise.

CHAPTER VI – OF THE CIVIL STATUS OF PERSONS BORN ABROAD WHO ACQUIRE OR RECOVER FRENCH NATIONALITY

(Act n° 78-731 of 12 July 1978)

Art. 98

A record taking the place of a record of birth shall be drawn up for any person born abroad who acquires or recovers French nationality unless the record drawn up at his birth was already entered on a register kept by a French authority.

That record shall state the name, first names and sex of the party concerned and indicate the place and date of his birth, his parentage, his residence at the date of his acquiring French nationality.

Art. 98-1

A record taking the place of a record of marriage shall likewise be drawn up where the person who acquires or recovers French nationality got previously married abroad, unless the celebration of the marriage was already taken note of by a record entered on a register kept by a French authority.

The record shall state:

- the date and place of the celebration;

- indication of the performing authority;

- the names, first names, dates and places of birth of each one of the spouses;

- the parentage of the spouses; and

- if there is occasion, the name, capacity and residence of the authority who received the ante-nuptial agreement.

Art. 98-2

One and the same record may be drawn up containing the statements as to birth and marriage, unless birth and marriage were already taken note of by records entered on a register kept by a French authority.

It shall be used as both a record of birth and a record of marriage.

Art. 98-3

The records referred to in Articles 98 to 98-2 shall state besides:

- the date on which they were drawn up;

- the name and signature of the officer of civil status;

- the mentions entered in the margin of the record of which they take the place;

- indication of instruments and judgments relating to the nationality of the person.

Mention shall be made later in the margin:

- of the indications required for each category of record by the law in force.

Art. 98-4

The persons for whom records were drawn up under Articles 98 to 98-2 lose the power of requiring the entry of their record of birth or marriage received by a foreign authority.

In the case of conflict between the statements in a foreign record of civil status or a record of French consular civil status and those in a record drawn up under said Articles, the latter shall prevail until a judgment of rectification.

CHAPTER VII - OF THE RECTIFICATION OF RECORDS OF CIVIL STATUS

Art. 99

(Ord. n° 58-779 of 23 Aug. 1958; D. n° 81-500 of 12 May 1981)

A rectification of records of civil status shall be ordered by the president of the court.

The rectification of judgments which are declaratory of or supply for records of civil status shall be ordered by the president of the court.

The application for rectification may be lodged by any party concerned or by the Government procurator ; the latter shall act of his own motion where the mistake or omission bears on an essential indication of the record or of the judgment which takes its place.

The Government procurator who has territorial jurisdiction may undertake administrative rectification of merely clerical mistakes and omissions in the record of civil status: for this purpose he shall give all necessary instructions directly to the depositaries of registers.

Art. 99-1

(Act n° 78-731 of 12 July 1978)

Persons entitled to perform the duties of an officer of civil status in order to draw up the records referred to in Articles 98 to 98-2 may undertake administrative rectification of merely clerical mistakes and omissions contained in those records "or in the mentions inserted in the margins, save those that are entered after the making of the records" (Act n° 93-22 of 8 Jan. 1993).

Art. 100 (0rd. n° 58-779 of 23 Aug. 1958)

A judicial or administrative rectification of a record or judgment relating to civil status has effect vis-à-vis any party.

Art. 101 (0rd. n° 58-779 of 23 Aug. 1958; D. n° 81-500 of 12 May 1981)

An office copy of the record may be issued only with the rectifications ordered, on pain of the fine prescribed by Article 50 of the Civil Code and subject to all damages against the depositaries of registers.

TITRE III

OF DOMICILE

Art. 102

(Ord. n° 58-923 of 7 Oct. 1958)

The domicile of a French person, as to the exercise of his civil rights, is at the place where he has his main establishment.

Boatmen and other persons living on a boat of inland navigation registered in France, who do not have the domicile provided for by the preceding paragraph or a statutory domicile, must elect a domicile in one of the communes the names of which appear on a list established by an order of the Minister of Justice, the Minister of the Interior and the Minister of Public Works, Transport and Tourism. However, wage-earning boatmen and persons living on board with them may domicile themselves in another commune provided that the concern that operates the boat has its headquarters or an establishment there; in this event, the domicile is fixed in the offices of the concern; failing an election by them, those boatmen and persons have their domiciles at the headquarters of the concern which operates the boat and, where those headquarters are abroad, at the chartering office in Paris.

[deleted]

Art. 103

A change of domicile takes place in consequence of an actual residence in another place, in addition to the intention to fix one's main establishment there.

Art. 104

Proof of that intention shall result from an express declaration made both to the municipality of the place which one leaves and to that of the place where the domicile is transferred.

Art. 105

Failing an express declaration, proof of intention shall depend on circumstances.

Art. 106

A citizen called to a temporary or revocable public office keeps the domicile he had previously, unless he has manifested an intention to the contrary.

Art. 107

Acceptance of an office conferred for life involves an immediate transfer of the domicile of the officer to the place where he is to fulfil his duties.

Art. 108

(Act n° 75-617 of 11 July 1975)

A husband and a wife may have distinct domiciles without conflicting thereby with the rules concerning the community of living.

A notice served upon one spouse, even judicially separated, in matters of status and capacity of persons, must also be served upon his or her spouse, under pain of invalidity.

Art. 108-1

(Act n° 75-617 of 11 July 1975)

Separate residence of the spouses, during proceedings for divorce or judicial separation, involves as of right separate domiciles.

Art. 108-2

(Act n° 75-617 of 11 July 1975)

A minor when not emancipated is domiciled at his father and mother's home.

Where the father and mother have separate domiciles, he is domiciled at the home of the parent with whom he resides.

Art. 108-3

(Act n° 75-617 of 11 July 1975)

An adult in guardianship shall be domiciled at his guardian's home.

Art. 109

Adults who usually serve or work at someone else's place, have the same domicile as the person they serve or at whose place they work where they live in the same house .

Art. 110 [deleted]

Art. 111

Where an instrument contains, on the part of the parties or of one of them, an election of domicile for the implementation of that instrument in a place other than that of the actual domicile; the services of notices, complaints and proceedings related to that instrument may be done at the elected domicile "and, subject to the provisions of Article 48 of the new Code of Civil Procedure, before the judge of that domicile" (D. n° 75-1122 of 5 Dec. 1975).

TITLE IV

OF ABSENTEES

(Act n° 77-1447 of 28 Dec. 1977)

CHAPTER I - OF PRESUMPTION OF ABSENCE

Art. 112

Where a person has ceased to appear at the place of his domicile or residence and has not been heard from, the judge of guardianships may, on the application of the parties concerned or of the Government procurator, establish that there is presumption of absence.

Art. 113

The judge may designate one or several relations by blood or marriage or, where appropriate, any other persons to represent the person presumed absentee in the exercise of his rights or in any act which would be his concern, as well as to administer all or part of his property ; the representation of the presumed absentee and the administration of his property shall then be subject to the rules which apply to statutory administration under judicial supervision such as it is provided for minors and, in addition, under the following amendments.

Art. 114

Without prejudice to specific jurisdiction conferred upon other courts, for the same purposes, the judge shall fix, where appropriate, according to the extent of the property, the sums that should be allocated yearly to the maintenance of the family or the household expenses.

He shall determine how to provide for the settling of children.

He shall also specify how the expenses of administration as well as, if necessary, the fees that may be granted to the person responsible for the representation of the presumed absentee and the administration of his property should be settled.

Art. 115

The judge may, at any time and even of his own motion, put an end to the task of the person thus designed; he may also replace him .

Art. 116

Where a presumed absentee is called to a partition, Article 838, paragraph 1, of the Civil Code shall apply.

However, the judge of guardianships may authorize a partition, even partial, and designate a notaire to undertake it, in the presence of the representative of the presumed absentee or of his substitute designated as provided for in Article 115, where the original representative is himself concerned in the partition. The statement of liquidation is subject to the approval of the tribunal de grande instance .

Art. 117

The Government procurator's office shall be specially responsible for watching over the interests of presumed absentees; it shall be heard on all claims which concern them; it may of its own motion request the implementation or amendment of the measures provided for in this Title.

Art. 118

Where a presumed absentee reappears or is heard from, on his application, the judge shall put an end to the measures taken for representing him and administering his property; he shall then recover the property managed or acquired on his behalf during the period of absence.

Art. 119

Rights acquired without fraud on the basis of the presumption of absence, may not be called in question again where the death of the absentee is established or judicially declared, whatever the date fixed for the death may be.

Art. 120

The preceding provisions concerning the representation of presumed absentees and the administration of their property shall also apply to persons who, because of remoteness, are not, against their wish, in a position to express their intention.

Art. 121

These same provisions shall not apply to presumed absentees or to persons named in Article 120 where they left a power of attorney adequate for the purpose of representing them or administering their property.

It shall be the same where a spouse may provide sufficiently for the interests concerned through application of the matrimonial regime and particularly as a result of an order obtained under Articles 217 and 219, 1426 and 1429.

CHAPTER II - OF DECLARATION OF ABSENCE

Art. 122

When ten years have elapsed since the judgment that established the presumption of absence, either in the manner prescribed in Article 112, or on the occasion of one of the judicial

proceedings provided for in Articles 217 and 219, 1426 and 1429, absence may be declared by the tribunal de grande instance, on the application of any person concerned or of the Government procurator's office.

It shall be the same where, failing that establishment, the person will have ceased to appear at the place of his domicile or residence, without having been heard from for more than twenty years.

Art. 123

Extracts of the application seeking declaration of absence, after being stamped by the Government procurator's office, shall be published in two newspapers circulating in the département or, where appropriate, in the country of the domicile or last residence of the person who remains unheard froim.

The court to which the application is referred may in addition order any other measure giving notice thereof in any place where it deems it proper.

Those measures must be carried out by the party who lodges the application.

Art. 124

As soon as the extracts have been published, the application must be forwarded, via the Government procurator, to the court which shall decide according to the exhibits and documents filed and in consideration of the conditions of the disappearance as well as of the circumstances that can explain the lack of news.

The court may order any complementary measure of investigation and prescribe, if there is occasion, that an examination of witnesses be made adversarily with the Government procurator, where the latter is not an applicant, in any place which it deems proper, and particularly in the arrondissement of the domicile, or those of the last residences, where they are different.

Art. 125

An originating motion may be lodged as early as the year preceding the expiry of the period provided for in Article 122, paragraphs 1 and 2. A declaratory judgment of absence shall be handed down at least one year after the publication of the extracts of that petition. It shall establish that the person presumed absentee has not reappeared during the periods referred to in Article 122.

Art. 126

A motion seeking declaration of absence shall be deemed void where the absentee reappears or the date of his death happens to be declared, before the handing down of the judgment.

Art. 127

Where a declaratory judgment of absence is handed down, extracts thereof shall be published in accordance with the detailed rules provided for in Article 123, within the period fixed by the court. The judgment shall be deemed void where it is not published within that period.

Where the judgment becomes res judicata, its operative part shall be recorded on request of the Government procurator on the registers of death of the place of domicile of the absentee or of his last residence. Mention of that recording shall be made in the margin of the registers at the date of the judgment declaring the absence; it shall also be made in the margin of the record of birth of the person declared absentee.

Following registration, the judgment is enforceable vis-à-vis third parties who may only obtain rectification in accordance with Article 99.

Art. 128

A declaratory judgment of absence involves, from the recording, all the effects that an established death of the absentee would have had .

The measures taken for the administration of the property of the absentee in accordance with Chapter I of this Title come to an end, save as otherwise decided by the court or, failing which, by the judge who ordered them.

The spouse of the absentee may marry again.

Art. 129

Where an absentee reappears or his existence is proved after the declaratory judgment of absence, annulment of that judgment may be sought, on application of the Government procurator or of any party concerned.

However, where a party concerned wishes to be represented, he may do so only through a counsel regularly entitled to practise.

The operative part of the judgment of annulment shall be published forthwith in accordance with the detailed rules provided for in Article 123. Mention of the judgment shall be made, from the time of its publication, in the margin of the declaratory judgment of absence and on any register which refers to it.

Art. 130

An absentee whose existence is judicially established recovers his property and that he should have received during his absence in the condition in which it may be, the proceeds of that which has been transferred or the property acquired by way of investment out of the capital or incomes fallen due to him.

Art. 131

A party concerned who has induced a declaration of absence by fraud is liable to restore to the absentee whose existence has been judicially established the incomes of the property which he would have enjoyed and to remit him the legal interests from the day of receipt, without prejudice, where appropriate, to complementary damages.

Where fraud falls on the spouse of the person declared absentee, the latter is entitled to contest the liquidation of the matrimonial regime to which the declaratory judgment of absence has put an end.

Art. 132

Marriage of an absentee remains dissolved, even where a declaratory judgment of absence is annulled.

Art. 133 to 143 [repealed]

TITRE IV

OF MARRIAGE

CHAPTER I - OF THE QUALIFICATIONS AND CONDITIONS REQUIRED FOR CONTRACTING A MARRIAGE

Art. 144

A male, until the completion of eighteen years, a female until the completion of fifteen years, may not contract marriage.

Art. 145

(Act n° 70-1266 of 23 Dec. 1970)

Nevertheless, the Government procurator of the place where a marriage is to be celebrated may grant dispensations as to age for serious reasons.

Art. 146

There is no marriage where there is no consent.

Art. 146-1

(Act n° 93-1027 of 24 Aug. 1993)

The marriage of a French person, even where contracted in a foreign country, requires his being present.

Art. 147

No one may contract a second marriage before the dissolution of the first.

Art. 148

(Act of 17 July 1927)

Minors may not contract marriage without the consent of their father and mother; in case of disagreement between the father and mother, that division implies consent.

[repealed]

[repealed]

Art. 149

(Act of 7 Feb. 1924)

Where one of the two is dead or is unable to express his or her intention, the consent of the other suffices.

It is not necessary to produce the records of death of the father or mother of one of the future spouses where the spouse or the father and mother of the deceased certify the death under oath.

Where the present residence of the father or mother is unknown, and where he or she has not been heard from for one year, the marriage may be celebrated if the child and the parent who consents make declaration of this under oath.

All of which shall be mentioned on the record of marriage.

A false oath taken in the cases specified in this Article and the following Articles of this Chapter shall be punished by the penalties enacted by Article 363 [Article 434-13] of the Penal Code.

Art. 150

(Act of 17 July 1927)

Where the father and mother are dead or are unable to express their intention, the grandfathers and grandmothers take their place; where there is disagreement between a grandfather and a grandmother in the same lineage, or where there is disagreement between the two lineages, that division implies consent.

(Act of 7 Feb. 1924) Where the present residence of the father and mother is unknown and where they have not been heard from for one year, the marriage may be celebrated if the grandfathers and grandmothers, together with the child himself, make declaration of this under oath. It shall be likewise where, if one or several grandfathers or grandmothers give their consent to the marriage, the present residence of the other grandfathers or grandmothers is unknown and they have not been heard from for one year.

Art. 151

(Act of 2 Feb. 1933)

The production of an office copy, reduced to the operative part, of the judgment that declared the absence or ordered an examination of witnesses as to the absence of the father and mother, grandfathers or grandmothers of one of the future spouses, is equivalent to the production of their records of death in the cases specified in Articles 149, 150, 158 and 159 of this Code.

Art. 152 [repealed]

Art. 153 [repealed by implication]

Art. 154

(Act of 2 Feb. 1933)

The disagreement between the father and mother, between the grandfather and grandmother of the same lineage, or between ancestors of the two lineages may be established by a notaire, requested by the future spouse and acting without the intervention of a second notaire or of witnesses, who will give notice of the planned union to the one or those of the father, mother or ancestors whose consent has not yet been gained .

The instrument containing the notice shall state the first names, names, occupations, domiciles and residences of the future spouses, of their fathers and mothers or, where appropriate, of their grandparents, as well as the place where the marriage is to be celebrated .

It shall also state a declaration that this notice is given for purpose of gaining the consent not yet granted and that, failing which, the celebration of the marriage shall be proceeded with.

Art. 155

(Act of 4 Feb. 1934)

The disagreement of the ascendants may also be established, either by a letter bearing an authenticated signature and addressed to the officer of civil status who is to celebrate the marriage, or by an instrument drawn up in the form provided for by Article 73, paragraph 2.

The instruments listed in this Article and the preceding Article shall be stamped and registered gratis.

Art. 156

(Act of 21 June 1907)

An officer of civil status who celebrates marriages contracted by sons or daughters who have not reached the full age of eighteen years, without the consent of the fathers and mothers, that of the grandfathers or grandmothers and that of the family council, when it is required, being mentioned in the record of marriage, shall be sentenced to the fine specified in Article 192 of the

Civil Code, at the suit of the parties concerned or of the Government procurator of the tribunal de grande instance of the arrondissement where the marriage was celebrated.

Art. 157

(Act of 4 Feb. 1934)

An officer of civil status who has not required proof of the notice prescribed by Article 154 shall be sentenced to the fine provided for in the preceding Article.

Art. 158

(Act of 10 March 1913)

An illegitimate child lawfully acknowledged who has not reached the full age of eighteen may not contract a marriage without having gained consent of the one of his father and mother who acknowledged him, or of the two if he was acknowledged by both.

(Act of 17 July 1927) In case of disagreement between the father and mother, that division implies consent.

(Act of 7 Feb. 1924) Where one of them is dead or unable to express his intention, the consent of the other suffices.

[repealed]

Art. 159

(Act n° 64-1230 of 14 Dec. 1964)

Where there are no father, or mother, or grandfathers, or grandmothers, or where all are unable to express their intention, minors under eighteen years may not contract marriage without the consent of the family council.

An illegitimate child who was not acknowledged, and one who, after being so, lost his father and mother or whose father and mother cannot express their intention, may marry before the age of eighteen years only after gaining the consent of the family council.

Art. 160

(Act n° 64-1230 of 14 Dec. 1964)

Where the present residence of those of the ascendants of a minor under eighteen of whom the death is not established is unknown and where the ascendants have not been heard from for one year, the minor shall make a declaration of it under oath before the judge of guardianships of his residence, with the assistance of his clerk, in his chambers, and the judge of guardianships shall place it on record.

The judge of guardianships shall give notice of that oath to the family council which shall rule on the application for authorization to marry. However, the minor may give the oath directly in the presence of the members of the family council.

Art. 161

In direct lineage, marriage is prohibited between all ascendants and descendants, legitimate or illegitimate, and the relatives by marriage in the same lineage.

Art. 162

(Act of 1 July 1914)

In collateral lineage, marriage is prohibited between legitimate or illegitimate brother and sister. [repealed]

Art. 163

(Act n° 72-3 of 3 Jan. 1972)

Marriage is further prohibited between uncle and niece, aunt and nephew, whether the relationship be legitimate or illegitimate.

Art. 164

(Act of 10 March 1938)

Nevertheless, the President of the Republic may for serious reasons remove the prohibitions entered:

1° in Article 161 as to marriages between relatives by marriage in direct lineage where the person who created the relationship is dead;

2° [repealed]

3° in Article 163 as to marriages between uncle and niece, aunt and nephew.

CHAPTER II - OF THE FORMALITIES RELATING TO THE CELEBRATION OF MARRIAGE

Art. 165

(Act of 21 June 1907)

Marriage shall be celebrated publicly before the officer of civil status of the commune where one of the spouses has his domicile or his residence at the date of the public notice provided for by Article 63 and, in the event of dispensation of public notice, at the date of the dispensation provided for by Article 169 below.

Art. 166

(Ord. n° 58-779 of 23 Aug. 1958)

The public notice required by Article 63 shall be made at the town hall of the place of celebration and at that of the place where each one of the future spouses has his domicile or, in the absence of domicile, his residence.

Art. 167 and 168 [repealed]

Art. 169

(Act of 8 April 1927)

The Government procurator of the arrondissement in which the marriage is to be celebrated may, for serious reasons, dispense with public notice and with any period or only with the bill-sticking of the notice.

(Ord. n° 45-2720 of 2 Nov. 1945) He may also, in exceptional cases, dispense the future spouses, or one of them only, with the handing over of the medical certificate required by Article 63, paragraph 2.

The medical certificate may not be demanded to any of the future spouses in case of imminent danger of death of one of them, as provided for in Article 75, paragraph 3, of this Code.

Art. 170

(Act of 21 June 1907)

A marriage contracted in a foreign country between French persons and between a French person and an alien is valid where it is celebrated in the forms in use in that country, provided it was preceded by the public notice prescribed by Article 63, in the Title Of Records of

Civil Status, and the French person did not commit a breach of the provisions contained in the preceding Chapter.

(Act of 29 Nov. 1901) It shall be likewise as regards a marriage contracted in a foreign country between a Frenchman and an alien (Act n° 2003-1119 of 26 Nov. 2003), where it was celebrated by diplomatic agents or by consuls of France, in accordance with French legislation.

Nevertheless, diplomatic agents or consuls may only proceed to the celebration of the marriage between a Frenchman and an alien woman in the countries designated by decrees of the President of the Republic.(Act n° 2003-1119 of 26 Nov. 2003)Except in case of impossibility or where it appears, upon examination of the file, that said hearing is not necessary with respect to Article 146, diplomatic or consular agents shall, for the implementation of paragraphs 1 and 2 of this Article, proceed to hearing jointly the future spouses or spouses, according to the circumstances, either at the time of the request for public notice under Article 63, or at the time of the issuing of the certificate of marriage, or in case of a request for registration of the marriage by a French national. Diplomatic or consular agents may, if necessary, require to have a talk with either one of the spouses or future spouses. They may also demand that the spouses or future spouses be present on the occasion of each one of the above mentioned formalities.

Art. 170-1

(Act n° 93-1027 of 24 Aug. 1993)

Where there is serious circumstantial evidence giving rise to the presumption that a marriage celebrated abroad incurs annulment under Articles 184, [deleted, Act n° 2003-1119 of 26 Nov. 2003] or 191, the diplomatic or consular agent in charge of the registration of the record shall immediately inform the Government procurator's office and defer the registration.

The Government procurator shall rule upon the registration. Where he claims annulment of the marriage, he shall order that the registration be limited to the only purpose of referring the matter to the court; until the judgement of the latter, an office copy of the registered record may be issued only to judicial authorities or with the authorization of the Government procurator

Where the Government procurator did not come to a decision within a period of six months after the reference, the diplomatic or consular agent shall register the record..

Art. 171

(Act n° 59-1583 of 31 Dec. 1959)

The President of the Republic may, for grave reasons, authorize the celebration of the marriage where one of the future spouses is dead after the completion of the official formalities indicating unequivocally his or her consent.

In this case, the effects of the marriage date back to the day preceding that of the death of the spouse.

However, this marriage may not involve any right of intestate succession to the benefit of the survivor and no matrimonial regime is considered to have existed between the spouses

CHAPTER III - OF FORMAL OBJECTIONS TO MARRIAGE

Art. 172

The right to interpose an objection to the celebration of a marriage belongs to the person united by marriage with one of the two contracting parties.

Art. 173

(Act of 9 Aug. 1919)

The father, the mother and, in the absence of the father and the mother, the grandfathers and grandmothers may interpose an objection to the marriage of their children and descendants, even of full age.

After a judicial withdrawal of an objection to a marriage interposed by an ascendant, no new objection interposed by an ascendant is admissible and may delay the celebration.

Art. 174

In the absence of any ascendant, the brother or sister, the uncle or aunt, a cousin-german, of full age, may interpose an objection only in the following two instances :

1° (Act of 2 Feb. 1933) Where the consent of the family council, required by Article 159, was not gained;

2° Where the objection is based upon the state of insanity of the future spouse; that objection, the withdrawal of which may be unconditionally decided by the court, may be accepted only on condition for the objecting party to induce a guardianship of adults and gain a decision thereupon within the period fixed by judgment.

Art. 175

In the two cases provided for by the preceding Article, the guardian or curator may not, during the continuance of the guardianship or curatorship, interpose an objection, unless he is so authorized by the family council, which he may convene.

Art. 175-1

(Act n° 93-1027 of 24 Aug. 1993)

The Government procurator may interpose an objection in the cases in which he might apply for annulment of a marriage.

Art. 175-2

(Act n° 2003-1119 of 26 Nov. 2003)

Where there is serious circumstantial evidence giving rise, possibly after holding the hearings provided for in Article 63, to the presumption that the contemplated marriage may be annulled under Article 146, the officer of civil status may refer the matter to the Government procurator. He shall inform of it the persons concerned.

The Government procurator shall, within fifteen days after the matter has been brought before him, either let the marriage proceed, or interpose an objection to it, or decide that the celebration

must be stayed, pending the inquiry he initiates. He shall make his reasoned decision known to the officer of civil status and to the persons concerned.

The duration of the stay decided by the Government procurator may not exceed one month renewable once by a specially reasoned decision.

After expiry of the stay, the Government procurator shall make known to the officer of civil status by a reasoned decision whether he allows the celebration of the marriage or objects to it.

Either of the future spouses, even minor, may challenge the decision to stay or its renewal before the president of the tribunal de grande instance who shall give judgment within ten days. The judgment of the president of the tribunal de grande instance may be referred to the court of appeal* which shall decide within the same period.

Art. 176

(Act of 8 April 1927)

An instrument of objection shall state the capacity in which the party objecting is entitled to do so; it shall contain an election of domicile at the place where the marriage is to be celebrated ; it shall also contain the reasons of the objection and reproduce the text of law on which the objection is based; the whole on pain of nullity and of disqualification of the ministerial officer who has signed the instrument containing the objection.

(Act of 15 March 1933) After one full year, the instrument of opposition ceases to be effective. It may be renewed, except in the case referred to in Article 173, paragraph 2, above.

Art. 177

(Act of 15 March 1933)

The tribunal de grande instance shall decide within ten days on an application for withdrawal filed by the future spouses, even minors.

Art. 178

(Act of 15 March 1933)

If there is an appeal it shall be disposed of within ten days, and, where the judgment under appeal has granted the withdrawal of the objection, the court shall decide even of its own motion.

Art. 179

Where an objection is set aside, the parties objecting may be ordered to pay damages, with the exception however of the ascendants.

(Act of 20 June 1896) An application for retrial does not lie against a default judgment which sets aside an objection to marriage.

CHAPTER IV - OF APPLICATIONS FOR THE ANNULMENT OF A MARRIAGE

Art. 180

A marriage contracted without the free consent of the two spouses, or of one of them, may be attacked only by the spouses or by the one whose consent was not free.

(Act n° 75-617 of 11 July 1975) Where there was a mistake as to the person, or as to essential capacities of the person, the other spouse may apply for annulment of the marriage.

Art. 181

In the case of the preceding Article, the application for annulment may no longer be admissible whenever there has been continuous cohabitation for six months since the spouse acquired his or her full freedom or the mistake was discovered by him or her.

Art. 182

A marriage contracted without the consent of the father and mother, of the ascendants or of the family council, where this consent was necessary, may be attacked only by those whose consent was required, or by the one of the spouses who needed that consent .

Art. 183

An application for annulment may no longer be instituted by the spouses or the parents whose consent was required, whenever the marriage was expressly or tacitly approved by those whose consent was necessary, or where one year has elapsed without claim on their part since they have had knowledge of the marriage. Nor may it be instituted by the spouse where one year has elapsed without claim on his or her part, since he or she has reached the competent age to consent to the marriage by himself or herself.

Art. 184

(Act of 19 Feb. 1933)

A marriage contracted in violation of the provisions contained in Articles 144, 146, "146-1," (Act n° 93-1027 of 24 Aug. 1993) 147, 161, 162 and 163 may be attacked either by the spouses themselves, or by all those who have an interest therein, or by the Government procurator.

Art. 185

However, a marriage contracted by spouses who did not yet have the required age, or of whom one of the two had not reached that age, may no longer be attacked :

1° where six months have elapsed since that spouse or the spouses have reached the competent age;

2° where the wife, who did not have that age, has conceived before six months elapsed .

Art. 186

The father, the mother, the ascendants and the family when they have consented to the marriage contracted in the circumstances referred to in the preceding Article, may not be admitted to apply for its annulment.

Art. 187

In all cases in which an application for annulment may be instituted, in accordance with Article 184, by all those who have an interest therein, it may not be instituted by collateral relatives, or by the children born of another marriage, in the lifetime of the spouses, unless they have a vested and present interest.

Art. 188

A spouse to whose detriment a second marriage was contracted, may apply for its annulment even during the lifetime of the spouse who was bound to him or her.

Art. 189

Where the new spouses raise the invalidity of the first marriage, the validity or invalidity of that marriage must be judged beforehand.

Art. 190

In all cases to which Article 184 applies and under the modifications contained in Article 185, the Government procurator may and shall apply for annulment of the marriage, during the lifetime of the spouses, and have them ordered to separate.

Art. 190-1

[repealed]

Art. 191

A marriage which was not publicly contracted and which was not celebrated before the competent public officer, may be attacked by the spouses themselves, by the father and mother, by the ascendants and by all those having a vested and present interest, as well as by the Government procurator.

Art. 192

(Act of 21 June 1907)

Where a marriage was not preceded by the public notice required or where the dispensations allowed by law were not gained, or where the intervals prescribed between the public notice and the celebration were not observed, the Government procurator shall have the public officer fined an amount not exceeding "30 francs" (4,5 €) (Act n° 46-2154 of 7 Oct. 1946) and shall have the contracting parties, or those under whose authority they acted, fined in proportion to their wealth.

Art. 193

The penalties stated in the preceding Article are incurred by the persons therein named for any infringement of the rules prescribed by Article 165, even if those infringements are not held to be sufficient to involve annulment of the marriage.

Art. 194

No one may claim the quality of spouse and the civil effects of marriage unless he or she produces a record of celebration entered on the register of civil status; except in the cases provided for by Article 46, in the Title Of Records of Civil Status .

Art. 195

Apparent status may not exempt the alleged spouses who respectively avail themselves of it from producing the record of celebration of the marriage before the officer of civil status.

Art. 196

Where there is an apparent status and the record of celebration of the marriage before the officer of civil status is produced, the spouses have respectively no standing to sue for the annulment of that record.

Art.197

Where, however, in the case of Articles 194 and 195, there are children born of two persons who have openly lived as husband and wife and who are both dead, the legitimacy of the children may not be contested on the sole pretext of failure to produce the record of celebration, whenever legitimacy is proved by an apparent status which is not contradicted by the record of birth.

Art. 198

Where the proof of the lawful celebration of a marriage is established by the outcome of a criminal procedure, the entry of the judgment on the registers of civil status secures for the marriage, from the day of its celebration, all civil effects, both as regards the spouses and the children born of that marriage.

Art. 199

Where the spouses or one of them have died without having discovered fraud, a criminal action may be brought by all those who have an interest in having the marriage declared valid, and by the Government procurator.

Art. 200

Where a public officer is dead when fraud is discovered, a civil action may be instituted against his heirs, by the Government procurator, in the presence of the interested parties and upon their accusation.

Art. 201

(Act n° 72-3 of 3 Jan. 1972)

A marriage which has been declared void produces, nevertheless, its effects with regard to the spouses, where it was contracted in good faith.

Where good faith exists only on the part of one spouse, the marriage produces its effects only in favour of that spouse.

Art. 202

(Act n° 72-3 of 3 Jan. 1972)

It also produces its effects with regard to the children, even though none of the spouses was in good faith.

(Act n° 93-22 of 8 Jan. 1993) The judge shall rule on the exercise of parental authority as in matters of divorce.

CHAPTER V - OF THE OBLIGATIONS ARISING FROM MARRIAGE

Art. 203

The spouses contract together, by the sole fact of marriage, the obligation of feeding, supporting and educating their children.

Art. 204

A child has no claim against his father and mother for a settlement in view of marriage or otherwise.

Art. 205

(Act n° 72-3 of 3 Jan. 1972)

Children owe maintenance to their father and mother or other ascendants who are in need.

Art. 206

(Act of 9 Aug. 1919)

Sons- and daughters-in-law owe likewise and under the same circumstances, maintenance to their father- and mother-in-law, but this obligation ceases where the spouse owing to whom the affinity existed and the children born of his or her union with the other spouse are dead.

Art. 207

(Act n° 72-3 of 3 Jan. 1972)

The obligations resulting from these provisions are reciprocal.

Nevertheless, where the creditor has failed seriously to fulfil his obligations towards the debtor, the judge may discharge the latter from all or part of the maintenance obligations.

Art. 207-1 [repealed]

Art. 208

(Act n° 73-2 of 3 Jan. 1972)

Maintenance shall be granted only in proportion to the needs of the one who claims it, and to the wealth of the one who owes it.

The judge may, even of his own motion and according to the circumstances of the case, couple the periodical payments with a revision clause permitted by the law in force.

Art. 209

Where the one who provides or the one who receives maintenance is placed again in such a condition that the one can no longer give it, or the other is no longer in need of it, a discharge or reduction of it may be applied for.

Art. 210

Where the person who must provide maintenance establishes that he cannot make periodical payments, the "family causes judge"(Act n° 93-22 of 8 Jan. 1993) may, with full knowledge of the facts, order that he shall receive in his home, feed and maintain the one to whom he owes maintenance.

Art. 211

The "family causes judge" (Act n° 93-22 of 8 Jan. 1993) may also decide whether the father or mother who will offer to receive, feed and maintain in his or her home the child to which he or she owes maintenance should in that case be exempted from periodical payments.

CHAPTER VI - OF THE RESPECTIVE RIGHTS AND DUTIES OF THE SPOUSES

Art. 212

(Act of 22 Sept. 1942)

Spouses mutually owe each other fidelity, support and assistance.

Art. 213

(Act n° 70-459 of 4 June 1970)

Spouses are responsible together for the material and moral guidance of the family. They shall provide for the education of the children and shall prepare their future.

Art. 214

(Act n° 65-570 of 13 July 1965)

Where an ante-nuptial agreement does not regulate the contributions of the spouses to the marriage expenses, they shall contribute to them in proportion to their respective means .

[repealed]

[repealed]

Where one of the spouses does not fulfil his or her obligations, he or she may be compelled by the other to do so in the manner provided for in the Code of Civil Procedure.

Art. 215

(Act n° 70-459 of 4 June 1970)

Spouses mutually oblige themselves to a community of living.

(Act n° 75-617 of 11 July 1975) The residence of the family is at the place which they choose by common consent.

(Act n° 65-570 of 13 July 1965) The spouses may not, separately, dispose of the rights whereby the lodging of the family is ensured, or of the pieces of furniture with which it is garnished. The one of the two who did not give his or her consent to the transaction may claim the annulment of it: the action for annulment is open to him or her within the year after the day when he or she had knowledge of the transaction, without possibility of its ever being instituted more than one year after the matrimonial regime was dissolved.

Art. 216

(Act n° 65-570 of 13 July 1965)

Each spouse has full legal capacity; but his or her rights and powers may be restricted as a consequence of the matrimonial regime and of the provisions of this Chapter.

Art. 217

(Act n° 65-570 of 13 July 1965)

A spouse may be authorized by a court to enter alone into a transaction for which the assistance or the consent of the other spouse would be necessary, where the latter is not able to express his or her intention or where his or her refusal is not justified by the interest of the family.

The transaction entered into under the terms of a judicial authorization is effective against the spouse whose assistance or consent was lacking, without any personal obligation incumbent on him or her resulting from it

Art. 218

(Act n° 65-570 of 13 July 1965)

A spouse may give the other a written authorization to represent him or her in the exercise of the powers that the matrimonial regime confers to him or her.

(Act n° 85-1372 of 23 Dec. 1985) He or she may, in all cases, freely revoke that authorization.

Art. 219

(Act n° 65-570 of 13 July 1965)

Where one of the spouses is unable to express his or her intention, the other may be judicially entitled to represent him or her, in a general manner or for some particular transactions, in the exercise of the powers resulting from the matrimonial regime, the terms and extent of that representation being fixed by the judge.

Failing a legal power, power of attorney or judicial entitlement, the transactions entered into by a spouse in representation of the other are effective with regard to the latter according to the rules of management of another’s business.

Art. 220

(Act n° 65-570 of 13 July 1965)

Each one of the spouses has the power to make alone contracts which relate to the support of the household or the education of children: any debt thus contracted by the one binds the other jointly and severally.

Nevertheless, joint and several obligations do not arise as regards expenditures that are manifestly excessive with reference to the way of living of the household, to the usefulness or uselessness of the transaction, to the good or bad faith of the contracting third party.

(Act n° 85-1372 of 23 Dec. 1985) They do not arise either, where they were not concluded with the consent of the two spouses, as regards instalment purchases or loans unless those relate to reasonable sums needed for the wants of everyday life.

Art. 220-1

(Act n° 65-570 of 13 July 1965)

Where one of the spouses fails seriously in his or her duties and thus imperils the interests of the family, the "family causes judge" (Act n° 93-22 of 8 Jan. 1993) may prescribe any urgent measure which those interests require.

He may in particular forbid that spouse to make, without the consent of the other, grants of his or her own property and of that of the community, movable or immovable. He may also forbid the displacing of movables, subject to the specifying of those which he attributes to the personal use of the one or the other of the spouses.

The duration of the measures provided for in this Article must be determined. It may not exceed three years, including a possible extension;

Art. 220-2

(Act n° 65-570 of 13 July 1965)

Where an injunction prohibits the making of grants of property the conveyance of which is subject to registration, it must be registered at the suit of the applicant spouse. That registration ceases to be effective upon the expiry of the period determined by the injunction, subject for the party concerned to obtain in the interval a varying order, xhich shall be given notice of in the same manner .

Where an injunction prohibits the granting of movables, or the displacing them, it shall be served by the applicant on his or her spouse and involves the effect of rendering the latter a responsible custodian of the movables in the same manner as a person whose property is seized. Where served on a third party, the latter shall be deemed in bad faith.

Art. 220-3

(Act n° 65-570 of 13 July 1965)

May be annulled, on claim of the applicant spouse, all transactions entered into in violation of the injunction, where they were made with a third party in bad faith, or even with regard to a property the conveyance of which is subject to registration, where they are simply subsequent to the registration provided for by the preceding Article.

An action for annulment may be brought by the applicant spouse within two years after the day when he or she had knowledge of the transaction, without possibility of its ever being instituted, where that transaction is subject to registration, more than two years after its registration .

Art. 221

(Act n° 65-570 of 13 July 1965)

Each one of the spouses may open, without the consent of the other, a deposit account and a securities account in his or her personal name.

(Act 85-1372 of 23 Dec. 1985) With regard to the depositary, the depositor is always considered, even after dissolution of the marriage, to have free disposal of the funds and of the securities on deposit.

Art. 222

(Act n° 65-570 of 13 July 1965)

Where one of the spouses appears alone to do an act of administration or enjoyment or a grant on a movable which he or she holds individually, he or she is considered, with regard to the third party in good faith, to have the power to do that act alone.

This provision shall not apply to pieces of furniture referred to in Article 215, paragraph 3, or to movable tangible property the nature of which gives rise to a presumption of ownership of the other spouse in accordance with Article 1404 .

Art. 223

(Act 85-1372 of 23 Dec. 1985)

Each spouse may freely follow a trade, collect his or her earnings and salaries and dispose of them after discharging marriage expenses .

Art. 224 [repealed]

Art. 225

(Act 85-1372 of 23 Dec. 1985)

Each of the spouses shall administer, bind and transfer alone his or her personal property .

Art. 226

(Act n° 65-570 of 13 July 1965)

The provisions of this Chapter, on all questions where they do not save the application of ante-nuptial agreements, apply by the sole effect of marriage, whatever the matrimonial regime of the spouses may be.

CHAPTER VII - OF THE DISSOLUTION OF MARRIAGE

Art. 227

A marriage is dissolved:

1° By the death of one of the spouses;

2° By divorce lawfully pronounced;

3° [repealed]

CHAPTER VIII - OF SECOND MARRIAGES

Art. 228

(Act of 9 Aug. 1919)

A wife may contract a second marriage only three hundred full days after the dissolution of a preceding marriage.

(Act n° 75-617 of 11 Jul. 1975) That period comes to an end in case of delivery after the death of the husband. It also comes to an end where the wife produces a medical certificate attesting that she is not in a state of pregnancy.

(Act n° 75-617 of 11 Jul. 1975) The president of the tribunal de grande instance in whose jurisdiction the marriage is to be celebrated may, by interim ex parte order, shorten the period provided for by the preceding Article, where it obviously results from the circumstances that, for three hundred days, the former husband has not cohabitated with his wife. The petition is subject to transmission to the Government procurator's office. In the event of a dismissal of the petition, an appeal may be lodged.

TITLE VI

OF DIVORCE

(Act n° 75-617 of 11 July 1975)

CHAPTER I - OF CASES FOR DIVORCE

Art. 229

Divorce may be decreed in cases:

- either of mutual consent; or

- of breakdown of community life; or

- of fault.

Section I - Of Divorce by Mutual Consent

§1 - Of Divorce on Joint Petition by the Spouses

Art. 230

Where the spouses petition together for divorce, they are not required to make the reason for it known; they must only submit for the approval of the judge a draft convention which regulates the consequences of it .

The petition may be filed either by the respective counsels of the parties, or by one counsel chosen by common consent .

A divorce by mutual consent may not be petitioned during the first six months of marriage.

Art. 231

The judge shall consider the petition with each one of the spouses, then shall call them together. He shall then call the counsel or counsels .

Where the spouses maintain their intention to divorce, the judge shall indicate to them that their petition must be renewed after a three months period for consideration.

Failing a renewal within six months following the expiry of the period, the joint petition lapses.

Art. 232

The judge shall decree a divorce where he has acquired the conviction that the intention of the spouses is actual and that each one of them gave consent freely. He shall approve, through the same judgment, the agreement which regulates the consequences of the divorce.

He may refuse approval and not decree a divorce where he finds that the agreement insufficiently protects the interests of the children or of one of the spouses.

§2 - Of Divorce Petitioned by one Spouse and Accepted by the Other

Art. 233

One of the spouses may petition for divorce by taking into account a set of facts originating from both of them, that render intolerable the continuance of community life.

Art. 234

Where the other spouse acknowledges the facts before the judge, the latter decrees divorce without having to rule on the allocation of wrongs. A divorce thus decreed produces the effects of a divorce decreed against both spouses.

Art. 235

Where the other spouse does not acknowledge the facts, the judge may not decree divorce.

Art. 236

The declarations made by the spouses may not be used as evidence in any other action at law.

Section II - Of Divorce for Breakdown of Community Life

Art. 237

A spouse may petition for divorce by reason of an extended breakdown of community life, where the spouses have lived apart in fact for six years.

Art. 238

It shall be likewise where the mental faculties of the spouse have, for six years, been so seriously altered that community of life no longer exists between the spouses and cannot be restored in the future, according to the most reasonable anticipations.

The judge may dismiss the application of his own motion, subject to Article 240, where divorce may have too serious consequences for the illness of the spouse.

Art. 239

A spouse who petitions for divorce on grounds of breakdown of community life shall bear all the expenditures thereof. In his or her petition, he or she must specify the means by which the obligations towards the other spouse and the children will be fulfilled.

Art. 240

Where the other spouse establishes that the divorce would result, either for him or her, account being taken in particular of his or her age and of the duration of the marriage, or for the children, in exceptional material or moral hardship, the judge shall dismiss the petition.

He may even dismiss it of his own motion in the circumstances referred to in Article 238.

Art. 241

Breakdown of community life may be invoked as a ground for divorce only by the spouse who brings the originating petition, called principal petition.

The other spouse may then bring a petition, called counter-petition, by invoking the wrongs of the one who took the initiative. The counter-petition may seek only divorce and not judicial separation. Where the judge admits it, he dismisses the principal petition and decrees divorce against the spouse who took the initiative thereof.

Section III - Of Divorce for Fault

Art. 242

Divorce may be petitioned by a spouse for facts ascribable to the other where those facts constitute a serious or renewed violation of the duties and obligations of marriage and render unendurable the continuance of community life.

Art. 243

It may be petitioned by a spouse where the other has been sentenced to one of the penalties "provided for by Article 131-1 of the Penal Code" (Act n° 92-133 of 16 Dec. 1992).

Art. 244

Reconciliation of the spouses occurred after the facts alleged prevents their being invoked as a ground for divorce.

The judge shall then declare the petition inadmissible. A new petition may however be filed by reason of facts occurred or discovered after the reconciliation, the former facts being then recallable in support of that new petition.

Temporary continuance or renewal of community life must not be considered as a reconciliation where they result only from necessity or from an endeavour to conciliation or from the needs of the education of the children.

Art. 245

Faults of the spouse who took the initiative of the divorce do not prevent from considering his or her petition; they may, however, deprive the facts which the other spouse is reproached with of the seriousness that would make them a ground for divorce.

Those faults may be also invoked by the other spouse in support of a counter-petition in divorce . Where both petitions are granted, divorce is decreed against both spouses.

Even failing a counter-petition, divorce may be decreed against both spouses where wrongs against both appear in the hearings.

Art. 246

Where divorce is sought under Articles 233 to 245, the spouses may, as long as no judgment on the merits has been handed down, request the "family causes judge" (Act n° 93-22 of 8 Jan. 1993) to establish their agreement and approve the draft convention which regulates the consequences of the divorce.

The provisions of Articles 231 and 232 shall then apply.

CHAPTER II - OF DIVORCE PROCEEDINGS

Section I - General Provisions

Art. 247.

The tribunal de grande instance exercising civil jurisdiction has exclusive jurisdiction to rule on divorce and its consequences.

(Act n° 93-22 of 8 Jan. 1993) One judge of this court shall be assigned family causes. [deleted]

This judge has jurisdiction to decree a divorce, whatever the ground for it may be. He may transfer a case as it stands for hearings before a division of the court. That transfer is as of right when requested by a party .

(Act n° 87-570 of 22 July 1987) He shall also have exclusive jurisdiction, after the decree of divorce, whatever the ground for it may be, to rule on the details of the exercise of parental authority, "on changes as to periodical payments and on revision of the compensatory allowance or its terms of payment" (Act n° 2000-596 of 30 June 2000), as well as to decide to entrust the

children to a third party. He shall then rule informally and may be seized by the parties concerned even by a mere petition.

Art. 248

Hearings on the case, the consequences of divorce and interim orders may not be public.

Art. 248-1

In case of a divorce for fault, and on request of the spouses, the "family causes judge" (Act n° 93-22 of 8 Jan. 1993) may restrict himself to establish that there are facts constituting a cause of divorce in the grounds of the judgment, without having to state the wrongs and complaints of the parties.

Art. 249

Where a petition for divorce must be brought in the name of an adult in guardianship, it shall be filed by the guardian with the authorization of the family council, after advice of the attending physician.

An adult in curatorship shall bring the action himself with the assistance of the curator.

Art. 249-1

Where the spouse against whom a petition is filed is in guardianship, the action shall be brought against the guardian; where he or she is in curatorship, he or she is the defendant, with the assistance of the curator.

Art. 249-2

A special guardian or curator shall be appointed where the guardianship or curatorship was entrusted to the spouse of the person under a disability.

Art. 249-3

Where one of the spouses is placed under judicial supervision, a petition for divorce may be tried only after organization of a guardianship or curatorship.

Art. 249-4

Where one of the spouses is placed under one of the protective systems provided for in Article 490 below, no petition for divorce by mutual consent may be filed.

Art. 250

In case of statutory interdiction resulting from a sentence, a petition for divorce may be brought by the guardian only with the authorization of the person under disability.

Section II - Of Conciliation

Art. 251

Where divorce is sought for breakdown of community life or for fault, an attempt at conciliation is compulsory before judicial processions. It may be renewed during the proceedings.

Where divorce is sought by mutual consent of the spouses, a conciliation may be attempted pending the lawsuit according to the rules of procedure appropriate to that case for divorce.

Art. 252

Where the judge seeks to conciliate the spouses, he must personally have a talk with each of them separately before bringing them together in his presence .

The counsels must then, where the spouses so request, be called to be present and participate in the talk .

In the case of Article 238 and in that where the spouse against whom the petition is brought does not appear before the judge, the latter shall nevertheless have a talk with the other spouse and urge him or her to consideration.

Art. 252-1

An attempt at conciliation may be suspended and resumed without any formality, with the arranging of times for consideration for the spouses within a limit of eight days .

Where a longer period is deemed advisable, the judge may decide to suspend the proceedings and resort to a new attempt at conciliation within six months at most. He may, if there is occasion, make the requisite interim orders.

Art. 252-2

Where he does not succeed in having them renounce divorce, the judge shall try to induce the spouses to regulate amicably its consequences, in particular as regards the children, by agreements " which may be taken into account by the forthcoming judgment" (Act n° 93-22 of 8 Jan. 1993).

Art. 252-3

Anything that was said or written on the occasion of an attempt at conciliation, whatever the form it occurred, may not be invoked for or against a spouse or a third party in the further proceedings.

Section III - Of Interim Orders

Art. 253

In case of divorce on joint petition, the spouses themselves regulate interim measures in a provisional agreement which must be annexed to their originating petition .

The judge however may have the terms of that agreement deleted or amended which appear to him to be contrary to the welfare of the children.

Art. 254

At the time of the appearance of the spouses in the circumstances referred to in Article 233, or of the decree of non-conciliation in the other circumstances, the judge shall prescribe the measures which are required in order to ensure the living of the spouses and the children until the date on which the judgment becomes res judicata.

Art. 255

The judge may in particular:

1° Authorize the spouses to reside apart;

2° Allocate to one of them the enjoyment of the lodging and furniture of the household, or divide that enjoyment between them;

3° Order the delivery of clothes and personal belongings;

4° Order periodical payments and allowance for costs to be paid by one spouse to the other;

5° Grant to one of the spouses advance payments as to his or her part in the community property, where circumstances so dictate .

Art. 256

(Act n° 2002-305 of 4 March 2002)

Consequences of a separation for the children shall be settled in accordance with the provisions of Chapter I of Title IX of this Book.

Art. 257

From the originating petition, the judge may take emergency measures.

He may, on this ground, authorize the petitioning spouse to reside apart, if occasion be with his or her minor children.

He may also, as a safeguard of the rights of a spouse, order any protective measures such as the affixing of seals on community property. The provisions of Article 220-1 and the other safeguards provided for by the matrimonial regime remain nevertheless applicable.

Art. 258

Where he definitively dismisses a petition for divorce, the judge may rule on the contributions to the marriage expenses, the residence of the family and "the details of the exercise of parental authority" (Act n° 87-570, 22 Jul. 1987).

Section IV - Of Evidence

Art. 259

Facts invoked as grounds for divorce or as a defence to a petition may be established by any evidence, including admissions.

Art. 259-1

A spouse may not produce in court letters exchanged between his or her spouse and a third party which he or she obtained by duress or fraud.

Art. 259-2

The certificates drawn up on request of a party are set aside from the hearing where there was illegal entry into the domicile or unlawful invasion of intimacy of private life.

Art. 259-3

The spouses must communicate to each other and communicate to the judge as well as to experts designated by him, any information and documents appropriate for fixing allowances and payments and liquidating the matrimonial regime.

The judge may cause any proper inquiry to be instigated of debtors or of all those who hold assets on behalf of the spouses without professional secrecy being allowed to be raised.

CHAPTER III - OF THE CONSEQUENCES OF DIVORCE

Section I - Of the Date at which Divorce Takes Effect

Art. 260

A judgment granting divorce dissolves the marriage at the date at which it acquires force of res judicata.

Art. 261

To contract a new marriage, the wife must comply with the period of three hundred days provided for in Article 228.

Art. 261-1

Where the spouses were authorized to reside apart pending the lawsuit, that period starts running from the day of the judgment authorizing the separate residence or, in case of joint petition, approving the provisional agreement relating to this subject.

The wife may remarry without delay where divorce was granted in the circumstances provided for in Articles 237 and 238.

Art. 261-2

The period comes to an end where the birth of a child occurs after the decision authorizing or approving the separate residence or, failing which, after the date at which the divorce judgment acquired force of res judicata .

Where the husband dies before the divorce judgment acquired force of res judicata, the period runs from the decision authorizing or approving the separate residence .

Art. 262

A divorce judgment is effective against third parties, as regards the property of the spouses, from the day when the formalities of mention in the margin prescribed by the rules which apply to civil status have been performed .

Art. 262-1

A divorce judgment takes effect in the relations between spouses, as regards their property, as from the date of summons.

(Act n° 85-1372 of 23 Dec. 1985) The spouses may, one or the other, petition, if there is occasion, that the effect of the judgment be carried back to the date when they ceased to live together and collaborate. The one upon whom the wrongs of separation fall chiefly may not obtain that carrying back .

Art. 262-2

Any obligation contracted by one of the spouses on the responsibility of the community, any transfer of community property made by one of them within the limit of his or her power,

after the originating petition, shall be declared void, where there is evidence that there was fraud of the rights of the other spouse .

.

Section II - Of the Consequences of Divorce for the Spouses

§1 - General Provisions

Art. 263

Where divorced spouses wish to contract another union between themselves, a new celebration of marriage is required.

Art. 264

Following divorce, each of the spouses shall resume the use of his or her name.

However, in the circumstances provided for in Articles 237 and 238, the wife is entitled to keep the use of the husband's name when the divorce has been petitioned by him.

In the other circumstances, the wife may keep the use of the husband's name either with his consent, or with the authorization of the judge, where she proves that a particular interest lies therein for herself or for the children.

Art. 264-1

(Act n° 85-1372 of 23 Dec. 1985)

When he grants divorce, the "matrimonial causes judge" (Act n° 93-22 of 8 Jan. 1993) shall order the liquidation and partition of the patrimonial interests of the spouses and rule, if there is occasion, on requests for continuation of undivided ownership or preferential allotments.

§ 2 - Of the Consequences Peculiar to the Various Cases for Divorce

Art. 265

Divorce is deemed granted against one spouse where it occurs on his or her exclusive wrongs. It is also deemed granted against the spouse who took the initiative of the divorce where it is obtained by reason of breakdown of community life.

The spouse against whom divorce is granted loses the rights which legislation or agreement made with third parties confer upon a divorced spouse.

Those rights are not lost in case of mutual wrongs or of divorce by mutual consent.

Art. 266

Where divorce is granted on the exclusive wrongs of one of the spouses, this one may be ordered to pay damages for material and moral harm which his or her spouse suffers because of the dissolution of the marriage.

The latter may seek damages only in the occasion of an action for divorce .

Art. 267

Where divorce is granted on the exclusive wrongs of one of the spouses, this one loses by operation of law any gifts and matrimonial advantages which his or her spouse had granted to her or him, whether at the time of the marriage, or after.

The other spouse keeps the gifts and advantages which had been granted to him or her, even though they were stipulated to be reciprocal and reciprocity did not occur.

Art. 267-1

Where divorce is granted on mutual wrongs, each one of the spouses may revoke all or part of the gifts and advantages which he or she granted to the other.

Art. 268

Where divorce is granted on joint petition, the spouses themselves shall decide on the condition of the gifts and advantages which they granted to each other; where they decided nothing in this regard, they are deemed to have kept them .

Art. 268-1

Where divorce is granted on petition accepted by the other spouse, each one of the spouses may revoke all or part of the gifts and advantages which he or she granted to the other.

Art. 269

Where divorce is granted on the ground of breakdown of community life, the spouse who took the initiative for divorce loses by operation of law the gift and advantages which the other spouse granted to him or her.

The other spouse keeps his or hers.

§ 3 - Of Compensatory Benefit

Art. 270

Except where it is granted on the ground of breakdown of community life, divorce puts an end to the duty of support provided for by Article 212 of the Civil Code ; but one of the spouses may be compelled to pay the other a benefit intended to compensate, as far as possible, for the disparity that breakdown of the marriage creates in the respective ways of living.

Art. 271

A compensatory benefit shall be fixed according to the needs of the spouse to whom it is paid and to the means of the other, account being taken of the situation at the time of divorce and of its evolution in a foreseeable future.

(Act n° 2000-596 of 30 June 2000) In the context of the fixing of a compensatory benefit, by the judge or by the parties in the agreement referred to in Article 278, or on the occasion of a petition for revision, the parties shall provide the judge with declarations certifying on their honour the accuracy of their means, incomes, patrimonies and ways of living.

Art. 272

In determining the needs and means, the judge shall have regard, in particular, to/

- the ages and states of health of the spouses;

- (Act n° 2000-596 of 30 June 2000) the duration of the marriage;

- the time already devoted or that must be devoted to the education of children;

- their professional qualifications "and positions with regard to the labour market" (Act n° 2000-596 of 30 June 2000);

- their existing and foreseeable rights;

- "their respective situation as to retirement pensions" (Act n° 2000-596 of 30 June 2000);

- their patrimony, both in capital and income, after the liquidation of the matrimonial regime .

Art. 273

Compensatory benefit shall be in the nature of a lump sum. [repealed]

Art. 274

(Act n° 2000-596 of 30 June 2000)

Compensatory benefit shall take the form of a capital the amount of which shall be fixed by the judge .

Art. 275

The judge shall decide the details according to which the allotment or appropriation of property in capital will be made:

1° Payment of a sum of money;

2° Surrender of property in kind, movables or immovables, "for ownership or usufruct, for use or dwelling" (Act n° 2000-596 of 30 June 2000), the judgment operating a forced transfer in favour of the creditor;

3° Depositing securities which produce income in the hands of a third party in charge of paying the income to the spouse creditor of the benefit until the time limit fixed.

The divorce judgment may be made subject to actual payment of the capital or establishment of the guarantees provided for in Article 277.

Art. 275-1

(Act n° 2000-596 of 30 June 2000)

Where a debtor is not able to pay the capital under the terms of Article 275, the judge shall fix the arrangements for payment of the capital, within the limit of height years, in the form of monthly or annual payments linked to an index in accordance with the rules applicable to periodical payments.

A debtor may request revision of those arrangements for payment in case of a considerable change in his or her situation. By way of exception the judge may then, by a special and reasoned decision, authorize the payment of the capital on a total period of more than eight years.

On a debtor spouse's death, the responsibility for the balance of the capital passes to his or her heirs. Heirs may request revision of the arrangements for payment under the terms of the preceding paragraph.

A debtor or his or her heirs may at any time redeem the balance of the capital.

After liquidation of the matrimonial regime, the creditor of a compensatory benefit may refer to the judge a claim for payment of the balance of the capital.

Art. 276

(Act n° 2000-596 of 30 June 2000)

By way of exception, the judge may, by a specially reasoned decision, by reason of the age or state of health of the creditor which does not allow him or her to supply to his or her needs, fix the compensatory benefit in the form of a life annuity. He shall have regard to the factors laid down in Article 272 .

Art. 276-1

"An annuity shall be linked to an index; the index shall be determined as in periodical payments matters" (Act n° 2000-596 of 30 June 2000).

The amount of an annuity before index-liking shall be fixed in a uniform fashion for its entire duration or may vary by successive periods following the likely evolution of needs and means.

Art. 276-2

(Act n° 2000-596 of 30 June 2000)

On a debtor spouse's death, the responsibility for the life annuity passes to his or her heirs. Survivor's pensions possibly paid in the deceased spouse's right are deducted as of right from the annuity paid to the creditor. Unless otherwise decided by the judge to whom the creditor referred the matter, a deduction of the same amount shall still be granted where the creditor loses his or her right to a survivor's pension .

Art. 276-3

(Act n° 2000-596 of 30 June 2000)

A compensatory benefit fixed in the form of a life annuity may be revised, postponed or suppressed in case of an important change in the means or needs of the parties .

Revision may not lead to increase the annuity up to an amount above the one initially fixed by the judge .

An action for revision lies with the debtor and his or her heirs .

Art. 276-4

(Act n° 2000-596 of 30 June 2000)

The debtor of a compensatory benefit in the form of a life annuity may at any time refer the matter to the judge for the purpose of ruling on the replacement of the annuity by a capital determined under the terms of Articles 275 and 275-1.

That application may be made by the debtor's heirs .

The creditor of a compensatory benefit may make the same application where he or she establishes that a modification in the situation of the debtor allows that replacement, in particular at the time of liquidation of the matrimonial regime.

Art. 277

Irrespective of a statutory or judicial mortgage, the judge may order the debtor spouse to establish a pledge, to give security "or to enter into a contract that guarantees the payment of the annuity or capital" (Act n° 2000-596 of 30 June 2000).

Art. 278

In case of joint petition, the spouses shall fix the amount and terms of compensatory benefit in the agreement which they submit to the judge for approval . "They may lay down that the payment of the benefit will come to an end from the occurrence of a specific event. The benefit may be in the form of an annuity granted for a limited period" (Act n° 2000-596 of 30 June 2000).

The judge, however, shall refuse to approve the agreement where it fixes unfairly the rights and obligations of the spouses.

Art. 279

An approved agreement is enforceable at law as is a judicial decision.

It may be modified only by a new agreement between spouses, likewise submitted to approval .

Spouses have nevertheless the power to provide in their agreement that each of them may, in case of "important change in the means and needs of the parties" (Act n° 2000-596 of 30 June 2000), request the judge to revise the compensatory benefit.

Art. 280

The transfers and surrenders provided for in this Subsection shall be deemed dependent on the matrimonial regime. They may not be treated in the same ways as gifts.

Art. 280-1

The spouse on whose exclusive wrongs divorce was granted is not entitled to any compensatory benefit.

He or she may, however, obtain an indemnity by way of exception where, account being taken of the duration of community life and of the cooperation brought to the occupation of the other spouse, it appears obviously contrary to equity to refuse him or her any pecuniary compensation following divorce.

§ 4 - Of the Duty of Support after Divorce

Art. 281

Where divorce is granted for breakdown of community life, the spouse who took the initiative for divorce remains entirely bound by the duty of support .

In the case of Article 238, the duty of support shall cover all that is needed for the medical treatment of the sick spouse .

Art. 282

The fulfilling of the duty of support shall take the form of periodical payments. The latter may always be revised according to the means and needs of each one of the spouses .

Art. 283

Periodical payments cease to be owed by operation of law where the spouse who is the creditor of them contracts a new marriage .

An end shall be put to them where the creditor lives in a state of notorious concubinage.

Art. 284

On the death of the debtor spouse, the liability as to payments passes to his or her heirs.

Art. 285

Where the consistence of the debtor spouse's property so permits, periodical payments must be replaced, in whole or part, by the settling of a capital, according to the rules of Articles 274 to 275-1, "277" (Act n° 2000-596 of 30 June 2000) and 280.

Where that capital becomes inadequate to cover the needs of the creditor spouse, the latter may request a complement under the form of periodical payments.

§ 5 - Of Lodging

Art. 285-1

Where the premises serving as lodging for the family are the separate or personal property of one spouse, the judge may grant it on lease to the other spouse:

1° (Act n° 87-570 of 22 July 1987) Where parental authority is exercised by the latter over one or several children or, in case of exercise in common of parental authority, where one or several children have their usual residence in these lodgings;

2° Where divorce was granted on petition of the owner spouse, for breakdown of community life.

In the case provided for in 1° above, the judge shall fix the duration of the lease and may renew it until the coming of age of the youngest of the children.

In the case provided for in 2° above, the lease may not be granted for a duration exceeding nine years, but may be lengthened by a new judgment. It comes to an end by operation of law in case of remarriage of the one to whom it was granted. It shall be brought to an end where the latter lives in a state of notorious concubinage.

In all cases, the judge may terminate the lease where new circumstances so justify.

Section III - Of the Consequences of Divorce for the Children

Art. 286

(Act n° 2002-305 of 4 March 2002)

Consequences of divorce for the children shall be settled in accordance with the provisions of Chapter I of Title IX of this Book.

Art. 287 to 295 [repealed]

CHAPTER IV - OF JUDICIAL SEPARATION

Section I - Of Cases and Proceedings for Judicial Separation

Art. 296

Judicial separation may be granted on application of one of the spouses in the same cases and subject to the same conditions as divorce.

Art. 297

A spouse against whom a petition for divorce is filed may make a counterclaim for judicial separation. A spouse against whom a petition for judicial separation is filed may make a counterclaim for divorce.

Where a petition for divorce and a petition for judicial separation are simultaneously entertained, the judge shall grant a divorce on divided wrongs with regard to both spouses.

Art. 298

In addition, the rules contained in Chapter II above shall apply to the proceedings for judicial separation.

Section II - Of the Consequences of Judicial Separation

Art. 299

Judicial separation does not dissolve marriage but it puts an end to the duty of cohabitation.

Art. 300

A separated wife keeps the use of the husband's name. Nevertheless, the judgment of separation or a further judgment may forbid it to her. Where a husband has joined her wife's name to his name, she may also request that the husband be forbidden to bear it.

Art. 301

In case of death of one of the judicially separated spouses, the other spouse keeps the rights which legislation grants to a surviving spouse. He or she, however, is deprived of them where judicial separation was granted against him or her, according to the distinctions made in Article 265. Where judicial separation is granted on joint petition, the spouses may include in their agreement a renunciation of the rights of succession conferred upon them by Articles "756 to 757-3 and 764 to 766" (Act n° 2001-1135 of 3 Dec. 2001).

Art. 302

Judicial separation always involves separation of property.

Concerning property, the date at which judicial separation takes effect is determined as provided for in Articles 262 to 262-2.

Art. 303

Judicial separation leaves subsisting the duty of support; the judgment which grants it or a further judgment shall fix the periodical payments owed to the spouse in need.

Those payments shall be allotted irrespective of wrongs. The debtor spouse may nevertheless invoke, if there is occasion, the provisions of Article 207, paragraph 2.

Those payments are subject to the rules of maintenance obligations; nevertheless, the provisions of Article 285 shall apply to them.

Art. 304

Subject to the provisions of this Section, the consequences of judicial separation shall obey the same rules as the consequences of divorce stated in Chapter III above.

Section III - Of the End of Judicial Separation

Art. 305

Voluntary resumption of community life puts an end to judicial separation.

In order to be effective against third parties, it must either be established by a notarial instrument, or be the subject of a declaration to an officer of civil status. Mention of it shall be made in the margin of the record of marriage "of the spouses, as well as in the margins of their records of birth" (Act n° 85-1372 of 13 Dec. 1985).

Separation of property subsists unless the spouses adopt a new matrimonial regime as provided for in Article 1397.

Art. 306

On request of one of the spouses, a judgment of judicial separation shall be converted as of right into a judgment of divorce where judicial separation has lasted three years.

Art. 307

In all cases of judicial separation, it may be converted into divorce by joint petition.

Where judicial separation was granted on joint petition, it may be converted into divorce only by a new joint petition .

Art. 308

Because of a conversion, the cause for judicial separation becomes the cause for divorce; the allocation of wrongs is not changed.

The judge shall fix the consequences of divorce. The benefits and payments between spouses shall be determined according to the rules appropriate for divorce.

Art. 309

A wife may contract a new marriage as soon as the judgment of conversion has force of res judicata .

CHAPTER V - OF THE CONFLICT OF LAWS IN MATTERS OF DIVORCE AND OF JUDICIAL SEPARATION

Art. 310

Divorce and judicial separation are governed by French law :

- where both spouses are of French nationality;

- where both spouses have their domicile on French territory;

- where no foreign law considers it should govern whereas French courts have jurisdiction over a divorce or judicial separation case .

TITLE VII

OF PARENT AND CHILD (I)

(Act n° 72-3 of 3 Jan. 1972)

CHAPTER I - PROVISIONS COMMON TO LEGITIMATE AND ILLEGITIMATE CHILDREN

Art. 310-1

(Act n° 2002-305 of 4 March 2002)

All children whose parentage is lawfully established have the same rights and the same duties in their relations with their father and mother. They enter into the family of each of them.

Section I - Of Presumptions Regarding Parentage

Art. 311

Legislation presumes that a child was conceived during the period that extends from the three-hundredth to the one-hundred and eightieth day, inclusive, before the date of birth.

Conception is presumed to have taken place at any time during that period, depending of what the welfare of the child requires.

Contrary evidence may be adduced to rebut those presumptions.

Art. 311-1

Apparent status shall result from a sufficient collection of facts showing a bond of parentage and relationship between an individual and the family to which he is said to belong.

Apparent status must be continuous.

Art. 311-2

The main ones of those facts shall be:

That the individual has always borne the name of those from whom he is said to descend;

That the latter have treated him as their child, and that he has treated them as his father and mother;

That they have, in that capacity, provided for his education, support and settling;

That he is so recognized in society and by the family;

That public authorities consider him as such .

Art. 311-3

Subject to the conditions provided for in Articles 71 and 72 of this Code he parents or the child may apply to the judge of guardianships for an affidavit proving until proof to the contrary the apparent status, without prejudice to any other evidence to which they may resort to establish its existence in court, should it be contested.

(Act n° 93-22 of 8 Jan. 1993) The parental bonds established by an apparent status recorded in an affidavit shall be mentioned in the margin of the record of birth of the child.

Section II - Of Actions Regarding Parentage

Art. 311-4

No action is admissible as to the parentage of a child who was not born viable.

Art. 311-5

The tribunal de grande instance exercising civil jurisdiction shall have exclusive jurisdiction to have cognisance of actions regarding parentage.

Art. 311-6

In case of an offence interfering with the parentage of an individual, a criminal action may be ruled upon only after the judgment on the question of parentage has become res judicata.

Art. 311-7

Whenever they are not confined by statute within shorter periods, actions regarding parentage are time-barred after thirty years from the day when the individual was deprived of the status that he claims, or began to enjoin the status that is contested against him.

Art. 311-8

An action who belonged to an individual as to his parentage may be brought by his heirs only when he died as a minor or within five years after his coming of age or his emancipation.

His heirs may also pursue an action which he had already initiated, unless there was a withdrawal or non-suit.

Art. 311-9

An action regarding parentage may not be the subject of a waiver.

Art. 311-10

Judgments handed down in matters of parentage are enforceable even against persons who were not parties thereto; but the latter are entitled to file third party applications for rehearing.

Judges may of their own motion require that all the parties concerned against whom they consider judgment should be given be joined in the action.

Art. 311-11

Likewise, where in one of the actions granted by Articles 340 and 342 below, a defence [repealed] is raised, based on the fact that the mother had, during the legal period of conception, intercourse with a third party, the judge may order that the latter be joined in the action.

Art. 311-12

The courts shall rule on conflicts of parentages for which legislation did not lay down other guidelines by establishing the most probable parentage through any evidence.

Failing adequate means of conviction, they shall have regard to the apparent status.

Art. 311-13

In the case where they are constrained to dismiss the claim of a party who actually educated a minor child, the courts may nevertheless, account being taken of the welfare of the child, grant to that party a right of access.

Section III - Of the Conflict of Laws Relating to the Establishing of Parentage

Art. 311-14

Parentage is governed by the personal law of the mother on the day of birth of the child; where the mother is unknown, by the child's personal law.

Art. 311-15

However, where a legitimate child and his father and mother, or an illegitimate child and one of his father and mother have in France their usual common or separate residence, the apparent status has all the consequences it produces according to French law, even when the other elements of the parentage may depend upon a foreign law.

Art. 311-16

Marriage involves legitimation where, on the day when the union is celebrated, that consequence is admitted either by the law governing the effects of marriage, or by the personal law of one of the spouses, or by the child's personal law.

Legitimation on the authority of the court is governed, at the choice of the petitioner, either by the personal law of the latter, or by the child's personal law.

Art. 311-17

A voluntary acknowledgement of paternity or maternity is valid where it was made in accordance with either the personal law of his doer, or the child's personal law.

Art. 311-18

An action for purposes of subsidies is governed, at the choice of the child, by the law of its usual residence or the law of the usual residence of the debtor.

Section IV – Of Medically Assisted Procreation

Art. 311-19

(Act n° 94-653 of 29 July 1994)

In case of a medically assisted procreation with a third party donor, no parental bonds may be established between the donor and the child born out of the procreation.

No action in tort may lie against a donor.

Art. 311-20

(Act n° 94-653 of 29 July 1994)

Spouses or unmarried partners who, in order to procreate, resort to a medical assistance requiring the intervention of a third party donor, must, subject to conditions that ensure secrecy, give first their consents to a judge or a notaire who shall inform them of the consequences of their act as regards parentage.

Consent given to a medically assisted procreation prohibits any action for challenging parentage or claiming a status unless it is argued that the child was not born out of the medically assisted procreation or that the consent was deprived of effect.

Consent is deprived of effect in case of death, of the filing of a petition for divorce or judicial separation or of discontinuance of community life, occurred before the realisation of the medically assisted procreation. It is also deprived of effect where the male or the female revokes it in writing and before the realisation of the medically assisted procreation, in the hands of the physician in charge of the implementation of that assistance.

He who, after consenting to medical assistance to procreation, does not acknowledge the child born out of it renders himself liable vis-à-vis the mother and child

Furthermore, may be judicially declared the paternity outside of marriage of him who, after consenting to a medical assistance to procreation, does not acknowledge the child born out of it. The action shall comply with the provisions of Article 340-2 to 340-6.

Section V - Of the Rules of Devolution of Family Name

(2002; Act n° 2003-516 of 18 June 20031)

1 Shall come into force on 1 Jan. 2005

Art. 311-21

Where the parentage of a child has been established with regard to his two parents at the latest on the day of declaration of his birth or afterwards but simultaneously, the parents shall choose the family name which devolves upon him: either the father's name, or the mother's name, or both names coupled in the order they choose within the limit of one family name for each of them. Failing a joint declaration to the officer of civil status mentioning the choice of the name of the child, the latter shall take the name of the parent with regard to whom his parentage has first been established and the father's name where his parentage has been established simultaneously with regard to both.

Where a child of whom one parent at least is French is born abroad, parents who have not availed themselves of the power to choose the name in the way provided for in the preceding paragraph may make such a declaration at the time of the registration of the record, at the latest within three years of the birth of the child.

A name devolving on a first child has effect as to the other common children.

Where the parents or one of them bear a double family name, they may, by a joint written declaration, transmit only one name to their children.

Art. 311-22

The provisions of Article 311-21 shall apply to the child who becomes French in compliance with Article 22-1, in the way provided for by a decree in Conseil d'État.

Art. 311-23

The power to choose provided for in Articles 311-21 and 334-2 may be exercised only once.

CHAPTER II - OF LEGITIMATE CHILDREN

Section I - Of the Presumption of Paternity

Art. 312

A child conceived in wedlock has the husband as his father.

However, the latter may disavow the child in court, where he proves facts fitted to demonstrate that he cannot be the father.

Art. 313

In case of judgment or even of petition, either for divorce or for judicial separation, the presumption of paternity shall not apply to a child born more than three hundred days after the order authorizing the spouses to live apart, and less than one hundred and eighty days following either the final dismissal of the petition or a reconciliation.

The presumption of paternity regains however its full force, by operation of law, where the child has the apparent status of a legitimate child with regard to the spouses.

Art. 313-1

The presumption of paternity shall be set aside where a child, recorded without indication of the husband's name, has an apparent status only with regard to the mother.

Art. 313-2

Where the presumption of paternity is set aside in the circumstances provided for in the preceding Articles, the parentage of a child is established with regard to the mother as if there was a disavowal admitted in court.

Each one of the spouses may request that the effects of the presumption of paternity be reinstated by proving that, during the statutory period of conception, a de facto relationship took place, that renders probable the paternity of the husband. "The action may be brought by the child within two years after his coming of age" (Act n° 93-22 of 8 Jan. 1993).

Art. 314

A child born before the one-hundred and eightieth day of marriage is legitimate and shall be deemed to have been so as from his conception.

The husband, however, may disavow him as provided for in Article 312.

He may even disavow him on the sole proof of the date of the delivery, unless he knew of the pregnancy before the marriage, or behave like the father after the birth.

Art. 315

The presumption of paternity shall not apply to a child born more than three hundred days after the dissolution of the marriage or, in case of declared absence of the husband, to the one who was born more than three hundred days after the disappearance.

Art. 316

A husband must institute an action in disavowal within six months of the birth, where he is on the spot.

Where he was not on the spot, within six months from his return.

And within six months following the discovery of the fraud, where the birth of the child was concealed from him.

Art. 316-1

Where the husband is dead before having instituted the action, but still being within the prescribed period for doing so, his heirs are entitled to contest the legitimacy of the child.

Their action ceases nevertheless to be admissible where six months have elapsed from the time when the child has taken possession of property claimed to be paternal, or from the time when the child has disturbed them in their own possession.

Art. 316-2

An extra-judicial instrument containing a disavowal on the part of the husband or a contestation of legitimacy on the part of the heirs, is void where it is not followed by an action at law within the period of six months.

Art. 317

(Act n° 93-22 of 8 Jan. 1993)

An action in disavowal shall be directed, in the presence of the mother, against an ad hoc administrator designated on behalf of the child by the judge of guardianships in the way provided for in Article 389-3.

Art. 318

Even where there is no disavowal, the mother may contest the paternity of the husband, but only for the purpose of legitimation, when she remarried with the true father of the child after dissolution of the marriage .

Art. 318-1

On pain of dismissal, an action, directed against the husband or his heirs, must be joined with an application for legitimation "brought before the tribunal de grande instance" (Act n° 93-22 of 8 Jan. 1993).

It must be lodged by the mother and her new spouse within six months of their marriage and before the child has reached the age of seven years.

Art. 318-2

Judgment is given on the two petitions by one and the same ruling

which may entertain the contestation of legitimacy only where legitimation is admitted.

Section II - Of Proofs of Legitimacy

Art. 319

Parentage of legitimate children is proved by records of birth entered in the registers of civil status.

Art. 320

Failing this instrument, apparent status of a legitimate child is sufficient.

Art. 321

There is apparent status of a legitimate child where it binds the child indivisibly to his father and mother.

Art. 322

No one may claim a status contrary to that which is given to him by his record of birth and an apparent status consistent with that record.

And reciprocally, no one may contest the status of a person who has an apparent status consistent with his record of birth.

Art. 322-1

If however it is alleged that there was a setting up of a supposititious child, or a substitution, even unintentional, either before, or after the drafting of the birth record, proof of it is admissible and may be made by any means.

Art. 323

Failing record and apparent status, or where the child was entered, either under false names or without indication of the mother's name, proof of the parentage "may be judicially made only where there exist presumptions or circumstantial evidence serious enough to allow its being admissible." (Act n° 93-22 of 8 Jan. 1993).

[repealed]

Art. 324 [repealed]

Art. 325

Contrary proof may be made by any appropriate means to establish that the claimant is not the child of the mother whom he claims to have or even, maternity being proved, that it is not the child of the mother's husband.

Where the husband was not joined in the case for the claiming of status, he may contest his paternity within a period of six months after the day when he knew of the judgment which entertained the petition of the child having become res judicata.

Art. 326

Without waiting for a claim of status to be instituted by the child, the husband may, by any means, contest his paternity within a period of six months after the day when he knew of the birth.

Art. 327

After the death of the husband, his heirs are likewise entitled to contest his paternity, either as a precautionary step where the husband was still in the prescribed period for doing so, or in defence to a claim of status.

Art. 328

The spouses, separately or jointly, may, by bringing in proof as provided for in Article 323 above, claim a child as their own; but if the latter already has an established parentage, they must first demonstrate its inaccuracy, supposing that the case is one of those in which the law authorizes that demonstration.

Section III - Of Legitimation

Art. 329

(Act n° 93-22 of 8 Jan. 1993)

Legitimation may benefit all illegitimate children provided that their parentage has been lawfully established.

Art. 330

Legitimation takes place either by marriage of the parents, or on the authority of the court.

§ 1 - Of Legitimation by Marriage

Art. 331

All children born out of wedlock, "even deceased" (Act n° 93-22 of 8 Jan. 1993), are legitimated by operation of law by the subsequent marriage of their parents.

Where their parentage was not already established, those children must be the subject of an acknowledgement at the moment of celebration of the marriage.. In that event, the officer of civil status who performs the celebration shall take note of the acknowledgement and of the legitimation in a separate record. ["The family name of the children is determined under the rules laid down in Article 311-21" (Act n° 2002-304 of 4 March 20021)]

1 Shall come into force on 1 Jan. 2005

Art. 331-1

Where the parentage of an illegitimate child was established with regard to his father and mother or one of them only after their marriage, legitimation may take place only by virtue of a judgment.

That judgment shall state that the child has, since the celebration of the marriage, enjoyed the apparent status of their common child.

Art. 331-2

Any legitimation shall be mentioned in the margin of the record of birth of the legitimated child.

That mention may be required by any party concerned. In the case of Article 331, the officer of civil status shall provide for it himself, where he had knowledge of the existence of the children.

"The mention of the legitimation on the record of birth of an adult child is of no effect on his patronymic [replaced by "family name" (Act n° 2002-304 of 4 March 20021)] where the record does not contain in addition mention of the consent of the party concerned to the modification of his patronymic" [replaced by "family name" (Act n° 2002-304 of 4 March 20021)] (Act n° 93-22 of 8 Jan. 1993).

1 Shall come into force on 1 Jan. 2005

Art. 332 [repealed]

Art. 332-1

Legitimation confers on a legitimated child the rights and duties of a legitimate child.

"By means of a joint declaration produced at the time of the celebration of the marriage or ascertained by the court, the parents are entitled to the option provided for in Article 311-21, if parentage has been established in the way provided for in Article 334-1 and if they did not avail themselves of the power given by Article 334-2"(Act n° 2002-304 of 4 March 2002; Act n° 2003-516 of 18 June 20031). "Legitimation however may not have the effect of modifying the patronymic [replaced by "family name", Act n° 2002-304 of 4 March 2002; Act n° 2003-516 of 18 June 20031)] of an adult child without his consent" (Act n° 93-22 of 8 Jan. 1993).

It takes effect from the date of the marriage.

1 Shall come into force on 1 Jan. 2005

§ 2 - Of Legitimation on the Authority of the Court

Art. 333

Where it appears that a marriage is impossible between the two parents, the benefit of legitimation may yet be conferred on the child on the authority of the court provided that he has, with regard to the parent who so requests, the apparent status of an illegitimate child.

Art. 333-1

A petition for purposes of legitimation must be initiated by one of the two parents or by both jointly before the tribunal de grande instance.

Art. 333-2

Where one of the parents was, at the time of conception, in bonds of a wedlock which is not dissolved, his or her petition is admissible only with the consent of her or his spouse.

Art. 333-3

The court shall verify whether the statutory conditions are fulfilled and, after receiving or inducing, if there is occasion, the comments of the child himself, of the other parent where he or she is not a party to the petition, as well as that of the spouse of the petitioner, it shall pronounce the legitimation, if it considers it is justified.

Art. 333-4

A legitimation on the authority of the court takes effect at the date of the judgment which pronounces it finally.

Where it took place on petition of one of the parents, it does not have any effect with regard to the other; it does not involve change of the ["family" (Act n° 2002-304 of 4 March 20021)] name of the child, unless the court otherwise decides.

1 Shall come into force on 1 Jan. 2005

Art. 333-5

Where legitimation on the authority of the court was pronounced with regard to both parents, the child shall take the name of the father [replaced by "the family name of the child is determined under the rules laid down by Articles 311-21 and 311-23" (Act n° 2002-304 of 4 March 20021)]; where he is a minor," the court shall rule on the terms of exercise of parental authority" (Act n° 87-750 of 22 July 1987) as in matters of divorce.

1 Shall come into force on 1 Jan. 2005

Art. 333-6

The provisions of Articles 331-2, [repealed] and 332-1, paragraph 1, shall apply to legitimation on the authority of the court1.

1 Shall continue in force until 31 Dec 2004.

Art. 333-6.- "The provisions of Article 331-2 and of the first two paragraphs of Article 332-1 shall apply to legitimation on the authority of the court (Act n° 2002-304 of 4 March 2002 1).

1 Shall come into force on 1 Jan 2005

CHAPTER III - OF ILLEGITIMATE CHILDREN

Section I - Of the Effects of Illegitimacy and of the Modes of Establishing Illegitimate Kinship in General

Art. 334

[repealed]

[deleted]

Art. 334-1

An illegitimate child acquires the name of the parent with regard to whom his parentage has been established in the first place; [his father's name, where his parentage has been established simultaneously with regard to both. deleted by Act n° 2002-304 of 4 March 20021)]

1 Shall come into force on 1 Jan 2005

Art. 334-2

Even where his parentage was established only in the second place with regard to the father, an illegitimate child may take the latter's name by substitution when, during his minority, the two parents make joint declaration of it before "the chief clerk of the tribunal de grande instance" (Act n° 95-125 of 8 Feb. 1995)1.

Where the child is more than "thirteen" (Act n° 93-22 of 8 Jan. 1993) years old, his personal consent is required.

1 Shall continue in force until 30 Dec. 2004

Art. 334-2.- "Where the name of an illegitimate child was not transmitted in the way provided for in Article 311-21, his parents may, by means of a joint declaration made before the officer of civil status, choose during his minority whether they will substitute to it the family name of the parent with regard to whom parentage was established in the second place, or couple their two names, in the order they choose, within the limit of one family name for each of them. Mention of the change of name shall appear in the margin of the record of birth." (Act n° 2002-304 of 4 March 2002; Act n° 2003-516 of 18 June 20031).

Where the child is more than "thirteen" (Act n° 93-22 of 8 Jan. 1993) years old, his personal consent is required.

1 Shall come into force on 1 Jan 2005

Art. 334-3 . "In the other cases, the change of name of an illegitimate child must be requested to the family causes judge. However, the tribunal de grande instance seized of a request for the change of status of an illegitimate child may in one and the same judgment rule on it and on the application for the change of name of the child that was brought before it"

(Act n° 93-22 of 8 Jan. 1993).

An action may be instituted during the minority of the child and within two years following either its coming of age, or a modification brought about in his status.

Art. 334-4

The substitution of name extends as of right to the minor children of the party concerned. It extends to adult children only with their consent.

Art. 334-5

Failing established paternity, the mother's husband may, by substitution, confer his own name on the child by a declaration made jointly with the mother, under the conditions laid down in Article 334-2 above1.

. The child may however request to take back the name which he bore before, through a petition submitted to the "family causes judge" (Act n° 93-22 of 8 Jan. 1993), within two years following his coming of age.

1 Shall continue in force until 31 Dec. 2004.

Art. 334-5.- “Failing established maternity or paternity, the father's wife or the mother's husband according to the circumstances may confer by substitution her or his family name to the child by a declaration made jointly with the other spouse, subject to the conditions set out in Article 334-2. Subject to the same conditions, the coupled names of both spouses may also be conferred on the child in the order they have chosen and within the limit of one name for each of them.” (Act n° 2002-304 of 4 March 20021).

The child may however request to take back the name which he bore before, through a petition submitted to the "family causes judge" (Act n° 93-22 of 8 Jan. 1993), within two years following his coming of age.

1 Shall come into force on 1 Jan 2005

Art. 334-6

The rules for attributing a name provided for in the preceding Articles shall not prejudice the effects of an apparent status.

Art. 334-7 [repealed]

Art. 334-8

(Act n° 82-536 of 25 June 1982)

Illegitimate parentage is lawfully established by voluntary acknowledgement.

Illegitimate parentage may also be lawfully established by an apparent status or by the effect of a judgment.

Art. 334-9

An acknowledgement is void, a paternity or maternity action is not admissible, where the child has a legitimate prentage already established by an apparent status.

Art. 334-10

Where there exists between the father and mother of the illegitimate child one of the impediments to marriage provided for by Articles 161 and 162 above by reason of kinship, if parentage is already established with regard to the one, it is forbidden to establish parentage with regard to the other.

Section II - Of the Acknowledgement of Illegitimate Children

Art. 335

(Act n° 93-22 of 8 Jan. 1993)

Acknowledgment of an illegitimate child may be made in the record of birth, by an instrument received by the officer of civil status or by any other authentic instrument.

The instrument shall contain the statements provided for in Article 62.

(Act n° 96-604 of 5 July 1996) It shall also contain a mention that the maker of the acknowledgement was informed of the divisible character of the bond of illegitimate kinship.

Art. 336

An acknowledgement of the father without indication of the mother and admission on her part, has effect only with regard to the father.

Art. 337

A record of birth designating the mother is deemed to be an acknowledgment, where it is corroborated by an apparent status.

Art. 338

So long as it is not contested in court, an acknowledgement renders inadmissible the establishing of another parentage which contradicts it.

Art. 339

An acknowledgement may be contested by all persons having an interest therein, including his maker.

An action may also be instituted by the Government procurator's office where circumstantial evidence based on the instruments themselves renders improbable the declared paternity or maternity. "It may likewise be instituted where acknowledgement was made for evading the rules which govern adoption" (Act n° 96-604 of 5 July 1996).

Where there exists an apparent status which is consistent with the acknowledgement and has lasted at least ten years after it, no contestation is any longer admissible, unless on the part of the other parent, of the child himself or of those who claim to be the true parents.

Section III – Of Paternity and Maternity Suits

Art. 340

(Act n° 93-22 of 8 Jan. 1993)

Paternity out of wedlock may be judicially declared.

Proof of it may be made only where there exist serious presumptions or circumstantial evidence.

Art. 340-1 [repealed]

Art. 340-2

The action belongs only to the child.

During the minority of the child, the mother, albeit a minor, is alone entitled to institute it.

Where the mother did not acknowledge the child, where she is dead or unable to express her intention, the action shall be instituted as provided for in Article 464, paragraph 3, of this Code.

Art. 340-3

(Act n° 93-22 of 8 Jan. 1993)

An action to establish paternity must be brought against the alleged father or against his heirs; in the absence of heirs or where they have renounced the succession, against the State, the renouncing heirs being nevertheless joined in the action in order to maintain their rights.

Art. 340-4

An action must be instituted within two years after the child's birth, on pain of lapse.

(Act n° 93-22 of 8 Jan. 1993) Where however the alleged father and the mother have lived, during the statutory period of conception, in a state of concubinage involving, in the absence of community life, an enduring or continuous relationship, the action may be instituted until the expiry of a period of two years following the ending of the concubinage. Where the alleged father contributed to the support, the education or the settling of the child in the capacity of a father, the action may be instituted until the expiry of a period of two years following the ending of that contribution.

Where an action was not instituted during the minority of the child, the latter may institute it during two years after his coming of age.

Art. 340-5

Where it entertains the action, the court may, on petition of the mother, order the father to reimburse her for all or part of her maternity and support expenses during the three months preceding and the three months following the birth, without prejudice to damages she may claim under Articles 1382 and 1383.

Art. 340-6

The court shall rule, if there is occasion, on the attribution of name and on parental authority, under Articles 334-3 and "372" (Act n° 2002-305 of 4 March 2002).

Art. 340-7

When dismissing the petition, the judges may, however, allow subsidies to the child, if the relationship between the mother and the defendant was proved in the way provided for in Articles 342 and following.

Art. 341

(Act n° 93-22 of 8 Jan. 1993)

Maternity suits are allowed subject to Article 341-1.

The child who brings the action must prove that he is the one to whom the alleged mother has given birth.

(Act n° 93-22 of 8 Jan. 1993) Proof of it may be made only where there exist serious presumptions or circumstantial evidence.

Art. 341-1

(Act n° 93-22 of 8 Jan. 1993)

After a child's birth, his mother may request that the secrecy as to her admittance and identity be preserved.

Section IV - Of the Action for Purpose of Subsidies

Art. 342

An illegitimate child whose paternal parentage is not lawfully established may claim subsidies to the one who had a relationship with his mother during the statutory period of conception.

(Act n° 77-1456 of 29 Dec. 1977) An action may be instituted during the whole minority of the child; the latter may still institute it within two years following his coming of age where it was not done during his minority.

An action is admissible even where the father or mother were, at the time of the conception, in the bonds of a wedlock with another person, or if there existed between them an impediment to marriage governed by Articles 161 to 164 of this Code.

Art. 342-1

An action for purpose of subsidies may also be instituted by the child of a married woman, where his record of legitimate child is not corroborated by an apparent status.

Art.342-2

Subsidies shall be settled, in the form of periodical payments, according to the needs of the child, the means of the debtor and his family situation.

Periodical payments may be owed beyond the coming of age of the child, where he is still in need, unless that circumstance is imputable to his fault.

Art. 342-3

Where there is occasion to apply Article 311-11 above, the judge, failing other factors for decision, has the discretion to impose on the defendants an indemnity intended to ensure the support and education of the child, where faults are established against them or commitments were previously entered into by them.

That indemnity shall be collected by the Children's aid service, a public-interest organization or a judicial agent bound to professional secrecy, who will pay it over to the statutory representative of the child. The terms of this collecting and of this paying over shall be fixed by decree.

The provisions governing subsidies shall apply to that indemnity as to other issues.

Art. 342-4

(Act n° 93-22 of 8 Jan. 1993)

A defendant may defeat a claim by proving by any means that he cannot be the father of the child.

Art. 342-5

The responsibility of subsidies shall be transmitted to the succession of the debtor under the rules of Article "767" (Act n° 2001-1135 of 3 Dec. 2001).

Art. 342-6

Articles 340-2, 340-3 and 340-5 above shall apply to an action for purpose of subsidies.

Art. 342-7

A judgment which awards subsidies creates between the debtor and the beneficiary, as well as, if there is occasion, between each of them and the parents or the spouse of the other, the impediments to marriage regulated by Articles 161 to 164 of this Code.

Art. 342-8

Res judicata on an action for purpose of subsidies gives rise to no bar to proceedings against a subsequent paternity suit.

The award of subsidies ceases to have effect where the paternal parentage of the child happens to be established subsequently with regard to someone else than the debtor.

TITLE VIII

OF ADOPTION

(Act n° 66-500 of 11 July 1966)

CHAPTER I - OF PLENARY ADOPTION

Section I – Of the Requisites for Plenary Adoption

Art. 343

(Act n° 96-604 of 5 July 1996)

Adoption may be petitioned by two spouses not judicially separated , married for more than two years or who are both older than twenty-eight years.

Art. 343-1

Adoption may be also petitioned by a person over "twenty-eight years of age" (Act n° 96-604 of 5 July 1996).

Where the adopter is married and not judicially separated, his or her spouse's consent is required unless this spouse is unable to express his or her intention.

Art. 343-2

(Act n° 76-1179 of 22 Dec. 1976)

The requirement as to age provided for in the preceding Article is not imposed in the case of adoption of the spouse's child.

Art. 344

The adopters must be fifteen years older than the children whom they propose to adopt. Where the latter are their spouse's children the required difference of age is only ten years.

(Act n° 76-1179 of 22 Dec. 1976) The court may, however, if there are good reasons, make an adoption order where the difference in ages is smaller than that provided for by the preceding paragraph.

Art. 345

Adoption is allowed only in favour of children under fifteen, who have been received in the home of the adopter or adopters for at least six months.

Where however the child is older than fifteen and has been received before having reached that age by persons who did not fulfil the statutory requirements for adopting or where he was the subject of an ordinary adoption before reaching that age, plenary adoption may be applied for if the conditions for it are fulfilled, "during the minority of the child and within two years following his coming of age" (Act n° 96-604 of 5 July 1996).

Where it is older than "thirteen" (Act n° 76-1179 of 22 Dec. 1976), an adopted must personaly consent to his plenary adoption.

Art. 345-1

(Act n° 96-604 of 5 July 1996)

Plenary adoption of the spouse's child is allowed:

1° Where the child has a lawfully established parentage only with regard to that spouse;

2° Where the parent other than the spouse has been totally deprived of parental authority;

3° Where the parent other than the spouse is dead and has left no ascendant of the first degree or where the latter obviously took no further interest in the child.

Art. 346

No one may be adopted by several persons unless by two spouses.

(Act n° 76-1179 of 22 Dec. 1976) However, a new adoption may be ordered either after the death of the adopter or the two adopters, or after the death of one of the two adopters if the request is made by the new spouse of the survivor.

Art. 347

May be adopted:

1° Children to the adoption of whom the father and mother or the family council have validly consented;

2° Wards of the State;

3° Children declared abandoned in the way provided for in Article 350.

Art. 348

Where the parentage of a child is established with regard to his father and mother, the latter must both consent to the adoption.

Where one of them is dead or unable to express his or her consent or has lost his or her rights of parental authority, the consent of the other suffices.

Art. 348-1

Where the parentage of a child is established only with regard to one of his parents, that one shall give the consent to adoption.

Art. 348-2

Where the father and mother of the child are dead, unable to express their intention or deprived of their rights of parental authority, consent shall be given by the family council, after advice of the person who actually takes care of the child.

It shall be likewise where the parentage of the child is not established.

Art. 248-3

Consent to the adoption shall be given "before the clerk in chief" (Act n° 95-424 of 8 Feb. 1995) of the tribunal d'instance of the domicile or residence of the person who consents, or before a French or foreign notaire, or before French diplomatic or consular agents. It may also be received by the Children's aid service where the child was entrusted to them.

Consent to adoption may be withdrawn within "two months" (Act n° 96-604 of 5 July 1996). Withdrawal must be made by registered letter with request for advice of delivery addressed to the person or service that received the consent to adoption. The handing over of the child to his parents on even verbal request shall also be treated as proof of the withdrawal.

Where, on the expiry of the period of "two months" (Act n° 96-604 of 5 July 1996), consent was not withdrawn, the parents may still request restitution of the child, provided that he has not been placed for purpose of adoption. Where the person who received him refuses to give him back, the parents may refer the matter to the court which, taking into account the welfare of the child, shall determine whether there is occasion to order his restitution. By effect of restitution, a consent to adoption lapses.

Art. 348-4

(Act n° 96-604 of 5 July 1996)

Where the father and mother or the family council consent to the adoption of a child by entrusting him to the Children's aid service or to a body authorized for adoption, the choice of the adopter is left to the guardian with the agreement of the family council of the wards of the State or of the family council of the guardianship organized on the initiative of the body authorized for adoption.

Art. 348-5

Except where there exists a bond of relationship by blood or by marriage up to the sixth degree inclusive between the adopter and the adoptee, the consent to adoption of children under two years old is valid only if the child was actually entrusted to the Children's aid service "or to a body authorized for adoption" (Act n° 96-604 of 5 July 1996).

Art. 348-6

The court may make an adoption order where it considers abusive the refusal of consent raised by the legitimate or illegitimate parents or by one of them only, when they took no further interest in the child at the risk of endangering his health or morality.

It shall be likewise in case of abusive refusal of consent by the family council.

Art. 349

As regards the wards of State whose parents did not consent to an adoption, consent shall be given by the family council of those wards.

Art. 350

(Act n° 96-604 of 5 July 1996)

A child received by a private person, a body or a Children's aid service, whose parents obviously took no further interest to him during the year preceding the institution of a petition for declaration of abandonment, shall be declared abandoned by the tribunal de grande instance, except in case of a great distress of the parents and without prejudice to the provisions of paragraph 4. A petition for declaration of abandonment is required to be transmitted by the private person, the body or the Children's aid service who have received the child on the expiry of a period of one year where the parents obviously took no further interest to it .

(Act n° 76-1179 of 22 Dec. 1976) Are deemed to have obviously taken no further interest to their child parents who have not entertained with him relations necessary to maintain bonds of affection.

A mere withdrawal of consent to adoption, a request for news or a wish expressed but not carried out to take the child back may not be a token of interest sufficient to constitute the ground of a dismissal as of right of a petition for declaration of abandonment. "Those steps may not interrupt the period set out in paragraph 1"(Act n° 93-22 of 8 Jan. 1993).

Abandonment may not be declared where, during the period set out in paragraph 1 of this Article, a member of the family petitioned to assume care of the child and where that petition is declared to be consonant with the welfare of the child.

Where it declares that the child is abandoned, the court shall, by the same order, delegate the rights of parental authority over the child to the Children's aid service, to the body or to the private person "who received the child or to whom the latter was entrusted" (Act n° 93-22 of 8 Jan. 1993).

A third party application for revocation of the order is admissible only in case of deception, fraud or mistake as to the identity of the child.

Section II - Of the Placing for Purpose of Plenary Adoption and of the Judgment of Plenary Adoption

Art. 351

Placing for the purpose of adoption must be made by actual entrusting to the prospective adopters of a child for whom a valid and final consent to adoption was given, of a ward of State or of a child declared abandoned by judicial decision.

Where the parentage of the child is not established, there may be no placing for purpose of adoption during a period of "two months" (Act n° 96-604 of 5 July 1996) after the receiving of the child.

Placing may not take place where the parents of the child have petitioned for the restitution of the child so long as there is no decision on the conclusiveness of that petition at the request of the most diligent party.

Art. 352

Placing for the purpose of adoption is a bar to a restitution of the child to his family of origin. It defeats any declaration of parentage and any acknowledgement.

Where a placing for the purpose of adoption comes to an end or where the court refuses to order adoption, the effects of placing are retroactively set aside.

Art. 353

An adoption order may be made at the request of the adopter by the tribunal de grande instance which shall verify "within six months after reference to the court" (Act n° 93-22 of 8 Jan. 1993), whether the statutory requirements are fulfilled and adoption is consonant with the welfare of the child.

(Act n° 76-1179 of 22 Dec. 1976) In case the adopter has descendants, the court shall verify in addition whether the adoption is not likely to imperil family life.

Where the adopter dies after having properly received the child for purpose of his adoption, a petition may be filed on his or her behalf by the surviving spouse or by one of the adopter's heirs.

(Act n° 96-604 of 5 July 1996) Where the child dies after being properly received for purpose of its adoption, the petition may nevertheless be filed. The judgment has effect on the day preceding the death and involves only modification of the civil status of the child.

An adoption order shall not state its reasons.

Art. 353-1

(Act n° 96-604 of 5 July 1996)

In case of adoption of a ward of State ", of a child entrusted to a body authorized for adoption" (Act n° 2002-93 of 22 Jan. 2002), or of an alien child who is not the child of the adopter's spouse, the court shall verify before making an adoption order that the petitioner or petitioners gained an authorization to adopt or were dispensed with it.

Where an authorization was refused or was not issued within the statutory period, the court may make an adoption order if it considers that the petitioners have the capacity to receive the child and that the adoption is consonant with his welfare.

Art. 353-2. A third party application for revocation of the adoption order is admissible only in case of deception or fraud imputable to the adopters.

Art. 354

Within fifteen days of the date on which it came into force of res judicata, an order pronouncing plenary adoption shall be registered on the registers of civil status of the place of birth of the adoptee, on request of the Government procurator.

(Act n° 96-604 of 5 July 1996) Where the adoptee was born in a foreign country, the order shall be registered on the registers of the central service of civil status of the Ministry of Foreign Affairs.

The registration shall state the day, hour and place of birth, the sex of the child as well as his ["family name and" (Act n° 2002-304 of 4 March 20021)] first names such as they result from the adoption order, the first names, names, date and place of birth, occupation and domicile of the adopter or adopters. It may not contain any indication as to the actual parentage of the child.

The registration takes the place of a record of birth for the adoptee.

"The original record of birth kept by a French officer of civil status and, where appropriate," (Act n° 96-604 of 5 July 1996) the record of birth established under Article 58 shall, on the initiative of the Government procurator, be stamped "adoption" and treated as void.

1 Shall come into force on 1 Sept. 2003.

Section III – Of the Effects of Plenary Adoption

Art. 355

Adoption produces its effects from the day of the filing of the petition for adoption.

Art. 356

Adoption confers on the child a parentage which substitutes for his original parentage: the adoptee ceases to belong to his blood family, subject to the prohibitions of marriage referred to in Articles 161 to 164.

(Act n° 76-1179 of 22 Dec. 1976) However, an adoption of the spouse's child still leaves extant his original parentage with regard to that spouse and his or her family. It produces, furthermore, the effects of an adoption by two spouses.

Art. 357

Adoption confers on the child the name of the adopter [and, in case of adoption by two spouses, the husband's name.., deleted by Act n° 2002-304 of 4 March 20021]

["In case of adoption by two spouses, the name conferred on a child is determined under the rules laid down in Article 311-21." (Act n° 2002-304 of 4 March 20021)]

On request of the adopter or adopters, the court may modify the first names of the child.

Where the adopter is a married woman, the court may, in the adoption order, decide with the consent of the husband of the adopter that the name of the husband will be conferred on the adoptee; where the husband is dead or unable to express his intention, the court shall in its discretion make a determination after consulting the heirs of the husband or the closest persons entitled to inherit from him. [replaced by: "Where the adopter is a married woman or a married man, the court may, in the adoption order, decide, on request of the adopter, that the name of the spouse will be conferred on the adoptee, subject to the consent of the spouse. The court may also, on request of the adopter and subject to the consent of the spouse, confer on the child the coupled names of the spouses in the order they choose and within the limit of one family name for each of them.

"Where the husband or the wife of the adopter is dead or unable to express his or her intention, the court shall in its discretion make a determination after consulting the heirs of the deceased or the closest persons entitled to inherit from him or her." (Act n° 2002-304 of 4 March 20021)]

1 Shall come into force on 1 Sept 2003

Art. 357-1

(Act n° 2002-304 of 4 March 20021)

The provisions of Article 311-21 shall apply to a child who was the subject of an adoption lawfully ordered abroad and having in France the effects of a plenary adoption.

The adopters shall exercise the option available under that Article at the time of the request for registration of an adoption order by declaration sent to the Government procurator of the place where that registration is to be made.

Where the adopters request an order for enforcement of a foreign adoption order, they shall join a declaration of option to their request. Mention of that declaration shall be made in the decision.

Mention of the name chosen shall be made at the suit of the Government procurator, in the child's record of birth.

1 Shall come into force on 1 Sept 2003

Art. 358

An adoptee has, in the family of the adopter, the same rights and obligations as a child "whose parentage is established under Title VII of this Book" (Act n° 2002-305 of 4 March 2002).

Art. 359

Adoption is irrevocable.

CHAPTER II – OF ORDINARY ADOPTION

Section I – Of Requisites and Judgment

Art. 360

Ordinary adoption is allowed irrespective of the age of the adoptee.

(Act n° 96-604 of 5 July 1996) Where there are serious reasons justifying it, an ordinary adoption of a child who was the subject of a plenary adoption is allowed.

Where the adoptee is over "thirteen" (Act n° 93-22 of 8 Jan. 1993), he must personally consent to the adoption.

Art. 361

(Act n° 2001-111 of 6 Feb. 2001)

The provisions of Articles 343 to 344, 346 to 350, 353, 353-1, 353-2, 355 and 357, last paragraph [replaced by : "the last two paragraphs of Article 357" (Act n° 2002-304 of 4 March 20021)], are applicable to ordinary adoption.

1 Shall come into force on 1 Jan. 2005

Art. 362

Within fifteen days of the date on which it becomes res judicata, the order that pronounces an ordinary adoption must be mentioned or registered on the registers of civil status on request of the Government procurator.

Section II – Of the Effects of Ordinary Adoption

Art. 363

(Act n° 93-22 of 8 Jan. 1993)

Ordinary adoption confers the name of the adopter on the adoptee by adding it to the name of the latter.

"Where the adoptee and the adopter, or one of them, bear a double family name, the name conferred to the adoptee results from the addition of the adopter's name to his own name, within the limit of one name for each of them. The choice belongs to the adopter, who must obtain the consent of the adoptee where the latter is older than thirteen.

"In case of an adoption by two spouses, the name coupled with that of the adoptee shall be, on request of the adopters, either that of the husband, or that of the wife, within the limit of one name for each of them, and, failing an agreement, the first of the husband's names. Where the adoptee bears a double family name, the choice of the name which is preserved belongs to the adopters, who must obtain the consent of the adoptee where he is older than thirteen. In case of disagreement or failing a choice, the name of the adopters preserved is added to the first of the adoptee's names. (Act n° 2002-304 of 4 March 2002; Act n° 2003-516 of 18 June 20031)

The court, however, may on request of the adopter, decide that the adoptee will bear only the name of the adopter. "In case of an adoption by two spouses, the family name substituted to that of the adoptee may, at the choice of the adopters, be either that of the husband, or that of the wife, or the coupled names of the spouses in the order they choose and within the limit of one name for each of them" (Act n° 2002-304 of 4 March 20021). That request may also be filed after the adoption. Where the adoptee is older than thirteen, his personal consent to that

substitution of a patronymic [replaced by: "family name" (Act n° 2002-304 of 4 March 20021)] is required.

1 Shall come into force on 1 Jan. 2005

Art. 363-1

(Act n° 2002-304 of 4 March 20021)

The provisions of Article 363 shall apply to a child who has been the subject of an adoption lawfully ordered abroad and which has in France the effects of an ordinary adoption, where the record of birth is kept by a French authority.

The adopters must exercise the option available under that Article by a declaration sent to the Government procurator of the place where the record of birth is kept on the occasion of a request for updating the latter.

Mention of the name chosen is entered on the record of birth of the child, at the suit of the Government procurator.

1 Shall come into force on 1 Jan. 2005

Art. 364

An adoptee remains in his family of origin and preserves all his rights therein, in particular his rights of succession.

The prohibitions to marriage provided for in Articles 161 to 164 of this Code apply between the adoptee and his family of origin.

Art. 365

An adopter is, with regard to the adoptee, alone invested of all the rights of parental authority, including that of consenting to the marriage of the adoptee, unless she or he is the spouse of the father or of the mother of the adoptee; in that event, the adopter has parental authority concurrently with his or her spouse, "who retains alone the exercise of it, subject to a joint declaration with the adopter before the chief clerk of the tribunal de grande instance for the purpose of an exercise in common of that authority" (Act n° 2002-305 of 4 March 2002).

The rights of parental authority are exercised by the adopter or adopters on the "terms provided for by Chapter I of Title IX of this Book" (Act n° 2002-305 of 4 March 2002).

The rules of statutory administration and of guardianship of "minors" (Act n° 2002-305 of 4 March 2002) shall apply to an adoptee.

Art. 366

The bond of kinship resulting from adoption extend to the [repealed] children of the adoptee.

Marriage is prohibited :

1° Between the adopter, the adoptee and his descendants;

2° Between the adoptee and the adopter's spouse; reciprocally, between the adopter and the adoptee's spouse;

3° Between the adoptee children of the same individual;

4° Between the adoptee and the adopter's children.

Nevertheless, the prohibitions to marriage provided for in 3° and 4° above may be lifted by dispensation of the President of the Republic, where there are serious reasons.

(Act n° 76-1179 of 22 Dec. 1976) The prohibition to marriage provided for in 2° above may be lifted in the same conditions where the person who created the kinship is deceased.

Art. 367

An adoptee owes maintenance to the adopter where he is in need and, reciprocally, an adopter owes maintenance to the adoptee.

The obligation of maintenance continues to exist between the adoptee and his father and mother. However, the father and mother of the adoptee are bound to provide maintenance to him only where he cannot obtain it from the adopter.

Art. 368

(Act n° 2002-305 of 4 March 2002)

An adoptee and his descendants have, in the family of the adopter, the rights to succession provided for in Book III, Title I, Chapter III.

(Act n° 96-604 of 5 July 1996) The adoptee and his descendants do not have, however, the status of compulsory heirs with regard to the ascendants of the adopter.

Art. 368-1

Where an adoptee dies without descendants, property given by the adopter or received through succession from him shall return to the adopter or his descendants, where it still exists in kind at the time of the death of the adoptee, on condition to contribute to debts and subject to the vested rights of third parties. Property received gratuitously by the adoptee from his father and mother shall return likewise to the latter or to their descendants.

The surplus of property of an adoptee shall be divided in halves between the family of origin and the adopter's family, without prejudice to the rights of the spouse on the whole of the succession.

Art. 369

The effects of an adoption continue notwithstanding the subsequent establishment of a parental bo,d.

Art. 370

(Act n° 96-604 of 5 July 1996)

Where serious reasons so justify, adoption may be revoked , on request of the adopter or the adoptee, or, where the latter is a minor, of that of the Government procurator's office.

A request for revocation made by the adopter is admissible only where the adoptee is over fifteen.

Where the adoptee is a minor, the father and mother by blood or, failing them, a member of the family of origin up to the degree of cousin-german may also request revocation.

Art. 370-1

An order which revokes an adoption shall state its reasons

Its operative part shall be mentioned in the margin of the record of birth or of the registration of the adoption order, in the way provided for in Article 362 .

Art. 370-2

Revocation causes all effects of adoption to cease for the future .

CHAPTER III - OF THE CONFLICT OF LAWS RELATING TO ADOPTION AND OF THE EFFECTS IN FRANCE OF ADOPTIONS ORDERED ABROAD

(Act n° 2001-111 of 6 Feb. 2001)

Art. 370-3

The requirements for adoption are governed by the national law of the adopter or, in case of adoption by two spouses, by the law which governs the effects of their union. Adoption however may not be ordered where it is prohibited by the national laws of both spouses.

Adoption of a foreign minor may not be ordered where his personal law prohibits that institution, unless the minor was born and resides usually in France.

Whatever the applicable law may be, adoption requires the consent of the statutory representative of the child. Consent must be free, obtained without any compensation, subsequent to the birth of the child and informed as to the consequences of adoption, specially where it is given for the purpose of a plenary adoption, as to the entire and irrevocable character of the breaking off of the pre-existing parental bond.

Art. 370-4

The effects of an adoption ordered in France are those of French law.

Art. 370-5

An adoption lawfully ordered in a foreign country produces in France the effects of a plenary adoption where it breaks off completely and irrevocably the pre-existing parental bond. Failing which, it produces the effects of an ordinary adoption. It may be converted into a plenary adoption where the required consents were given expressly and advisedly.

TITLE IX

OF PARENT AND CHILD (II : OF PARENTAL AUTHORITY)

(Act n° 70-459 of 4 June 1970)

CHAPTER I - OF PARENTAL AUTHORITY WITH REGARD TO THE PERSON OF A CHILD

Art. 371

A child, at any age, owes honour and respect to his father and mother.

Art. 371-1

(Act n° 2002-305 of 4 March 2002)

Parental authority is a set of rights and duties whose finality is the welfare of the child.

It is vested in the father and mother until the majority or emancipation of the child in order to protect him in his security, health and morality, to ensure his education and allow his development, showing regard to his person.

Parents shall make a child a party to judgments relating to him, according to his age and degree of maturity.

Art. 371-2

(Act n° 2002-305 of 4 March 2002)

Each one of the parents shall contribute to the education and support of the children in proportion to his or her means, to those of the other parent and to the needs of the child.

That obligation does not come to an end as of right where the child is of age.

Art. 371-3

A child may not, without the permission of the father and mother, leave the family home and he may be removed from it only in cases of necessity as determined by statute.

Art. 371-4

(Act n° 2002-305 of 4 March 2002)

A child has the right to have personal relations with his grandparents. Only serious reasons may constitute a bar to that right.

Where the welfare of the child so requires, the family causes judge shall fix the details of the relations between a child and a third person, relative or not.

Art. 371-5

(Act n° 96-1238 of 30 Dec. 1996)

A child may not be separated from its brothers and sisters, unless this is not possible or where his welfare dictates a different solution. If there is occasion, the judge shall rule on the relations between the brothers and sisters.

Section I - Of the Exercise of Parental Authority

§ 1 - General Principles

Art. 372

(Act n° 2002-305 of 4 March 2002)

The father and mother shall exercise in common parental authority.

Where, however, parentage is established with regard to one of them more than one year after the birth of a child whose parentage is already established with regard to the other, the latter alone remains vested with the exercise of parental authority. It shall be likewise where parentage is judicially declared with regard to the second parent of the child.

Parental authority may however be exercised in common in case of joint declaration of the father and mother before the chief clerk of the tribunal de grande instance or upon judgment of the family causes judge.

Art. 372-1 and Art. 372-1-1 [repealed]

Art. 372-2

Where one of the "parents" (Act n° 93-22 of 8 Jan. 1993) performs alone an usual act of parental authority concerning the person of the child, he or she shall be considered to be acting with the consent of the other with regard to third parties in good faith,.

Art. 373

(Act n° 2002-305 of 4 March 2002)

Shall be deprived of the exercise of parental authority the father or mother who is unable to express his or her intention, by reason of a disability, absence or any other cause.

Art. 373-1

(Act n° 2002-305 of 4 March 2002)

Where one of the father and mother dies or is deprived of the exercise of parental authority, the other shall exercise that authority alone.

§2 - Of the Exercise of Parental Authority by Separated Parents

(Act n° 2002-305 of 4 March 2002)

Art. 373-2

Separation of the parents has no influence on the rules of devolution of the exercise of parental authority.

Each of the father and mother shall maintain personal relations with the child and respect the bonds of the latter with the other parent.

Any change of residence of one of the parents, where it modifies the terms of exercise of parental authority, shall be the subject of a notice to the other parent, previously and in due time.

In case of disagreement between them, the most diligent parent shall refer the matter to the family causes judge who shall rule according to what the welfare of the child requires. The judge shall apportion removal expenses and adapt accordingly the amount of the contribution to the support and education of the child.

Art. 373-2-1

Where the welfare of the child so requires, the judge may commit exercise of parental authority to one of the parents.

The exercise of the right of access and lodging may be refused to the other parent only for serious reasons.

That parent shall keep the right and duty to supervise the support and education of the child. He or she must have notice of the important choices relating to the life of the child. He or she shall comply with the obligation that devolves upon him or her under Article 371-2.

Art. 373-2-2

In case of a separation between the parents, or between the latter and the child, a contribution to his support and education shall take the form of periodical payments to be paid, according to the circumstances, by one of the parents to the other, or to the person to whom the child is entrusted.

The terms and guaranties of those periodical payments shall be fixed by the approved agreement referred to in Article 373-2-7 or, failing which, by the judge.

Those payments may in whole or in part take the form of a direct taking charge of costs incurred on behalf of a child.

They may in whole or in part be effected under the form of a right of use and dwelling.

Art. 373-2-3

Where the consistence of the debtor's property so permits, periodical payments may be replaced, in whole or in part, under the terms and guarantees provided for by the approved agreement or by the judge, by the payment of a sum of money in the hands of an accredited body responsible for granting in counterpart to the child an index-linked annuity, a surrender of property in usufruct or an allocation of property yielding income.

Art. 373-2-4

Ascription of additional means, in particular under the form of periodical payments, may, if there is occasion, be requested later on.

Art. 373-2-5

A parent who has primarily the responsibility of an adult child who cannot meet his own needs may ask the other parent to pay a contribution to his support and education. The judge may decide or the parents agree that this contribution be paid in whole or in part into the hands of the child.

§ 3 - Of the Intervention of the Family Causes Judge

(Act n° 2002-305 of 4 March 2002)

Art. 373-2-6

A judge of the tribunal de grande instance in charge of family causes shall settle issues brought before him in the framework of this Chapter in watching in particular over the safeguarding of the welfare of minor children.

The judge may order measures that allow to protect continuity and effectiveness of the keeping of the bonds of the child with each of his parents.

He may in particular order an entry on the passports of the parents to prohibit the child's departure from the territory without the authorization of the two parents.

Art. 373-2-7

Parents may seize the family causes judge to have approved the agreement through which they organize the terms of exercise of parental authority and establish their contributions to the support and education of the child.

The judge shall approve the agreement unless he observes that it does not sufficiently protect the welfare of the child or that the consent of the parents was not freely given.

Art. 373-2-8

The judge may also be seized by one of the parents or the Government procurator, who may himself be seized by a third person, relative or not, for the purpose of ruling upon the terms of exercise of parental authority and the contribution to the support and education of the child.

Art. 373-2-9

In compliance with the two preceding Articles, the residence of a child may be fixed alternately at the domicile of each of the parents or at the domicile of one of them.

On request of one of the parents or in case of disagreement between them about the mode of residence of the child, the judge may order provisionally an alternate residence of which he shall determine the duration. On the expiry of it, the judge shall rule finally on the residence of the child alternately at the domicile of each of the parents or at the domicile of one of them.

Art. 373-2-10

In case of disagreement, the judge shall endeavour to conciliate the parties.

For the purpose of making easier the search by the parents of a consensual exercise of parental authority, the judge may offer them a measure of mediation and, after gaining their agreement, designate a family mediator who will initiate it.

He may call upon them to meet a family mediator who will acquaint them with the subject and progress of such a measure.

Art. 373-2-11

Where he rules on the terms of exercise of parental authority, the judge shall take into consideration in particular:

1° The practice previously followed by the parents or the agreements they entered into earlier;

2° Feelings expressed by a minor child in the way provided for in Article 388-1;

3° The capacity of each parent to assume his or her duties and to respect the rights of the other;

4° The result of court-ordered appraisals possibly carried out, taking into account in particular the age of the child;

5° Information collected in possible social enquiries and counter-enquiries provided for in Article 373-2-12.

Art. 373-2-12

Before any decision fixing the terms of exercise of parental authority and of the right of access, or entrusting the children to a third person, the judge may assign the task of undertaking a social enquiry to any qualified person. This is for the purpose of collecting information on the situation of the family and on the conditions in which the children live and are educated.

Where one of the parents contests the conclusions of a social inquiry, a counter-inquiry may be ordered on his or her request.

A social inquiry may not be used in a trial of a cause for divorce.

Art. 373-2-13

The provisions of an approved agreement as well as the judgments relating to the exercise of parental authority may be varied or completed at any time by the judge, on request of the parents or of a parent or of the Government procurator, who himself may be seized by a third person, relative or not.

§ 4 - Of the Intervention of Third Persons

Art. 373-3

(Act n° 87-570 of 22 July 1987)

"Separation of the parents" (Act n° 2002-305 of 4 March 2002) is not a bar to the devolution provided for by Article 373-1, even where the parent who remains able to exercise parental authority was deprived of the exercise of some attributes of that authority by the effects of a judgment delivered against him or her.

(Act n° 2002-305 of 4 March 2002) The judge may, by way of exception and where the welfare of the child so requires, in particular when one of the parents is deprived of the exercise or parental authority, decide to entrust the child to a third person, chosen preferably within his relatives. He shall be seized and shall rule under Articles 373-2-8 and 373-2-11.

In exceptional circumstances, the "family causes judge" (Act n° 93-22 of 8 Jan. 1993) who decides on the terms of exercise of parental authority after "a separation of the parents" (Act n° 2002-305 of 4 March 2002) may decide, even in the lifetime of the parents, that in case of death of the parent who exercises parental authority, the child may not be placed in the custody of the survivor. He may, in that event, designate the person to whom the child shall temporarily be entrusted.

[deleted]

Art. 373-4

(Act n° 87-570 of 22 July 1987)

Where the child was entrusted to a third party, parental authority shall continue to be exercised by the father and mother; however, the person to whom the child was entrusted shall perform all the usual acts regarding his supervision and education.

The "family causes judge" (Act n° 93-22 of 8 Jan. 1993), where he temporarily entrusts the child to a third person, may decide that the latter shall require the establishment of a guardianship.

Art. 374

(Act n° 93-22 of 8 Jan. 1993)

Where the parentage of an illegitimate child is established only with regard to one of his parents, the latter shall exercise parental authority alone.

Where his parentage is established with regard to both parents under terms different from those provided for in Article 372, parental authority shall be exercised by the mother. It shall however be exercised in common by both parents where they make a joint declaration thereof before the "clerk in chief of the tribunal de grande instance" (Act n° 95-125 of 8 Feb. 1995).

In all cases the family causes judge may, on request of the father, the mother or the Government procurator's office, modify the terms of exercise of parental authority with regard to an illegitimate child. He may decide that it will be exercised either by one of the two parents, or in common by both parents; in that case, he shall designate the parent at whose home the child will have his usual residence.

The family causes judge may grant a right of supervision to the parent who does not have the exercise of parental authority. He may refuse him or her a right of access and lodging only for serious reasons.

In case of exercise in common of parental authority, the parent at whose home the children do not usually reside shall contribute to their support and education in proportion to the respective means of the parents.

Art. 374-1

(Act n° 93-22 of 8 Jan. 1993)

The court which decides on the establishing of an illegitimate parentage may decide to entrust the child temporarily to a third person who will be in charge of requiring the organization of a guardianship.

Art. 374-2

In all cases provided for in this Title, a guardianship may be established even where there is no property to be administered.

It shall be then organized in accordance with the provisions of Title X.

Section II - Of Educational Assistance

Art. 375

Where the health, security or morality of a not emancipated minor are imperilled, or where the conditions of his education are seriously endangered, measures of educational assistance may be judicially ordered on request of the father and mother jointly, or of one of them, "of the person or body to whom the child was entrusted" (Act n° 87-570 of 22 July 1987) or of the guardian, of the minor himself or of the Government procurator's office. Exceptionally, the judge may be seized of his own motion .

They may be ordered at the same time with regard to several children dependent on a same parental authority .

(Act n° 86-17 of 6 Jan. 1986) The decision shall fix the duration of the measure without exceeding two years, where it relates to an educational measure implemented by a service or body. A measure may be renewed by a judgment setting out the grounds on which it is based.

Art. 375-1

The juvenile judge shall have jurisdiction, subject to appeal, in all matters relating to educational assistance.

He shall always endeavour to secure the adhesion of the family to the measure contemplated.

Art. 375-2

Whenever possible, a minor must be kept in his present circle. In that case, the judge shall designate, either a qualified person, or a service of observation, education or rehabilitation in the free community, with the mission of bringing aid and counsel to the family in order to overcome the material or moral difficulties which it is encountering. That person or service shall be responsible for following the development of the child and making a periodical report of it to the judge.

The judge may also make the keeping of the child in his circle conditional on specific obligations, such as that of regularly attending a medical or educational institution, ordinary or specialized, or of exercising a professional activity.

Art. 375-3

Where it is necessary to withdraw the child from his present circle, the judge may decide to entrust him:

1° "To the other parent" (Act n° 2002-305 of 4 March 2002) ;

2° To another member of the family or to a trustworthy third person;

3° To a medical or educational, ordinary or specialized, service or institution;

4° "To a départemental Children's aid service" (Act n° 89-487 of 10 July 1989) .

However, where a petition for divorce was filed or a divorce order handed down between the father and mother, those measures may be taken only if a new circumstance likely to endanger the minor is revealed after the decision "which rules on the terms of exercise of parental authority or entrusts the child to a third person" (Act n° 87-570 of 22 July 1987) . They may not be a bar to the power of the "family causes judge" (Act n° 93-22 of 8 Jan. 1993) to decide, "under Article 373-3" (Act n° 2002-305 of 4 March 2002), to whom the child is to be entrusted. The same rules shall apply to judicial separation.

Art. 375-4

(Act n° 87-570 of 22 July 1987)

In the circumstances specified in 1°, 2° and 3° of the preceding Article, the judge may assign either to a qualified person, or to a service of observation, education or rehabilitation in the free community, the mission of bringing aid and counsel to the person or the service to whom the child was entrusted, as well as to the family, and of following the development of the child.

In all cases, the judge may join the handing over of the child with the same terms as under Article 375-2, paragraph 2. He may also decide that periodical report shall be made to him as to the situation of the child.

Art. 375-5

Provisionally, but subject to appeal, the judge may, pending suit, either order the provisory handing over of the child to a rest or observation centre, or take one of the measures provided for in Articles 375-3 and 375-4.

In case of emergency, the Government procurator of the place where the child was found, shall have the same power, with the responsibility of referring the matter within eight days to the competent judge who shall maintain, vary or revoke the measure.

Art. 375-6

Decisions taken in matters of educational assistance may, at any time, be varied or revoked by the judge who took them, either of his own motion, or on request of the father and mother jointly or of one of them, "of the person or service to whom the child was entrusted" (Act n° 87-570 of 22 July 1987) or of the guardian, the child himself or the Government procurator's office.

Art. 375-7

The father and mother whose child gave occasion for a measure of educational assistance keep their parental authority over him and exercise all the attributes of it that are not incompatible with the implementation of the measure. They may not emancipate the child without authorization of the juvenile judge, while the measure of educational assistance is being implemented

Where it was necessary to place the child outside the parents' home, the latter keep a right of correspondence and a right of access. The judge shall fix the terms thereof and may even, if the welfare of the child so requires, decide that the exercise of these rights or of one of them shall be temporarily suspended. "The judge may indicate that the locamlity of placement of the child shall be chosen so as to make easier, as far as possible, the exercise of the right of access for the parent or parents" (Act n° 98-657 of 29 July 1998) .

Art. 375-8

The expenses of support and education of the child who was the subject of a measure of educational assistance continue to devolve upon its father and mother as well as upon his ascendants from whom maintenance may be claimed, except for the power of the judge to discharge them of it in whole or in part.

Art. 375-9

(Act n° 2002-303 of 4 March 2002).- The judgment which, under Article 375-3, paragraph 3, entrusts the minor to an institution which receives persons admitted by reason of mental diseases,

shall be handed down after detailed medical advice from a physician not belonging to the institution, for a duration which may not exceed fifteen days.

The provision may be renewed, after medical assent given by a psychiatrist of the receiving institution, for a duration of one month, renewable.

Section III – Of the Delegation of Parental Authority

Art. 376

No relinquishment or transfer relating to parental authority may be effective, unless under a judgment in the cases specified below.

Art. 376-1

A "family causes judge" (Act n° 93-22 of 8 Jan. 1993) may, where he is called to rule upon "the terms of exercise of parental authority or upon the education of a minor child or where he decides to entrust a child to a third person" (Act n° 87-570 of 22 July 1987), take into consideration the covenants which the father and mother may have freely concluded between them on this subject, unless one of them adduces serious reasons which allow him or her to revoke his or her consent.

Art. 377

(Act n° 2002-305 of 4 March 2002)

The father and mother, jointly or separately, may, where circumstances so require, seize a judge for the purpose of having delegated all or part of the exercise of their parental authority to a third person, member of the family, trustworthy near relation, institution approved for receiving children or départemental Children's aid service.

In case of plain disinterest or where the parents are unable to exercise all or part of parental authority, the individual, the body or the départemental Children's aid service who received the child may also seize the judge for purpose of having delegated to them parental authority wholly or partially. In all cases referred to in this Article, both parents shall be called in

the case. Where the child concerned is the subject of a measure of educational assistance, delegation may occur only after opinion of the juvenile judge.

Art. 377-1

(Act n° 2002-305 of 4 March 2002)

Delegation, total or partial, of parental authority results from the judgment handed down by the family causes judge.

However, a judgment of delegation may provide, for the needs of education of a child, that the father and mother, or one of them, shall share all or part of the exercise of parental authority with the third person delegatee. That division shall require consent of the parent or parents in so far as they exercise parental authority. The presumption in Article 372-2 shall apply with regard to transactions performed by the delegator or delegators and the delegatee.

The judge may be seized of the difficulties that a shared exercise of parental authority may produce by the parents, one of them, the delegatee or the Government procurator. He shall rule in accordance with the provisions of Article 373-2-11 .

Art. 377-2

In all cases, delegation may come to an end or be removed by a new judgment, where new circumstances are adduced.

In the case where the father and mother are granted the return of the child, the "family causes judge" (Act n° 93-22 of 8 Jan. 1993) shall place on them, unless they are necessitous, reimbursement of all or part of the expenses of support.

[deleted]

Art. 377-3

The right to consent to the adoption of a minor may never be delegated.

Section IV – Of the Total or Partial Withdrawal of Parental Authority

Art. 378

By express provision of a criminal judgment, parental authority may be "totally withdrawn" (Act n° 96-604 of 5 July 1996) from the father and mother who are sentenced either as perpetrators, co-perpetrators or accomplices of a serious or ordinary offence committed on the person of their child, or as co-perpetrators or accomplices of a serious or ordinary offence committed by their child,.

That "withdrawal" (Act n° 96-604 of 5 July 1996) may be applied to ascendants other than the father and mother as regards that part of parental authority which they may have over their descendants.

Art. 378-1

The father and mother who "apart from any criminal sentence, either by maltreatment, or by usual and excessive consumption of alcoholic beverages or drug addiction, or by a notorious misconduct or criminal activities" or by lack of care or want of guidance, obviously endanger the security, health or morality of the child, "may be totally withdrawn parental authority" (Act n° 96-604 of 5 July 1996).

The father and mother who, for more than two years, have intentionally abstained from exercising the rights and fulfilling the duties they retained under Article 375-7, may likewise "be totally withdrawn parental authority" (Act n° 96-604 of 5 July 1996).

An action "for total withdrawal of parental authority" (Act n° 96-604 of 5 July 1996) shall be brought before the tribunal de grande instance, either by the Government procurator's office, or by a member of the family or by the child's guardian.

Art. 379

(Act n° 96-604 of 5 July 1996)

A total withdrawal of parental authority ordered under one of the two preceding Articles affects by operation of law all the attributes, patrimonial as well as personal, connected with parental authority; in the absence of other determination, it extends to all minor children already born at the time of the judgment. It involves, for the child, dispensation from maintenance

obligation, in derogation from Articles 205 to 207, unless otherwise provided by the judgment of withdrawal.

Art. 379-1

(Act n° 96-604 of 5 July 1996)

Instead of a total withdrawal, the judgment may be confined to ordering a partial withdrawal of parental authority, limited to the attributes it specifies. It may also decide that a total or partial withdrawal of parental authority will be effective only with regard to certain children already born.

Art. 380

When it orders "a total or partial withdrawal of parental authority or" (Act n° 96-604 of 5 July 1996) of the right of custody, the court seized shall, where the other parent is dead or has lost the exercise of parental authority, either "designate a third person to whom the child will be temporarily entrusted" (Act n° 87-570 of 22 July 1987) with the responsibility of requesting the organization of a guardianship, or entrust the child to the Children's aid service.

It may take the same measures where parental authority has devolved on one of the parents through the effect "of a total withdrawal of parental authority ordered" (Act n° 96-604 of 5 July 1996) against the other.

Art. 381

The father and mother who have been the subject "of a total withdrawal of parental authority" (Act n° 96-604 of 5 July 1996) or of a withdrawal of rights for one of the grounds provided for in Articles 378 and 378-1, may, by way of a petition, gain from the tribunal de grande instance, by proving new circumstances, the restitution to them, in whole or in part, of the rights of which they were deprived.

An application for restitution may be filed only one year at the earliest after the judgment ordering "the total or partial withdrawal of parental authority" (Act n° 96-604 of 5 July 1996) became irrevocable; in case of dismissal, it may be renewed only after a new period of one year. No application is admissible where, before the filing of the petition, the child has been placed for the purpose of adoption.

Where restitution is granted, the Government procurator's office shall, if there is occasion, apply for measures of educational assistance.

CHAPTER II - OF PARENTAL AUTHORITY WITH REGARD TO THE PROPERTY OF A CHILD

Art. 382

The father and mother have, subject to the distinctions that follow, the administration and enjoyment of the property of their child.

Art. 383

(Act n° 85-1372 of 23 Dec. 1985)

Statutory administration shall be exercised jointly by the father and mother where they exercise in common parental authority and, in the other cases, under judicial supervision, either by the father or by the mother, according to the provisions of the preceding Chapter.

Statutory enjoyment is attached to statutory administration: it belongs either to the two parents jointly, or to the one of the father and mother who is responsible for the administration.

Art. 384

The right of enjoyment comes to an end :

1° As soon as the child has completed "sixteen years" (Act n° 74-631 of 5 July 1974), or even earlier when he contracts marriage;

2° Through the causes which put an end to parental authority, or even, more particularly, through those which put an end to statutory administration;

3° Through the causes which involve extinction of any usufruct.

Art. 385

The charges of such enjoyment are:

1° Those to which usufructuaries are liable in general;

2° The feeding, supporting and educating the child, according to his wealth;

3° Debts which burden a succession received by the child to the extent that they must be discharged out of the income.

Art. 386

That enjoyment may not take place for the benefit of a surviving spouse who omits to make an inventory, authentic or under private signature, of property owed to a minor.

Art. 387

Statutory enjoyment does not extend to property acquired by a child through his work, or to that which is donated or bequeathed to him under the express condition that the father and mother may not have enjoyment of them.

TITLE X

OF MINORITY, OF GUARDIANSHIP AND OF EMANCIPATION

CHAPTER I - OF MINORITY

Art. 388

(Act n° 74-631 of 5 July 1974)

A minor is an individual of either sex who has not yet reached the full age of eighteen years.

Art. 388-1

(Act n° 93-22 of 8 Jan. 1993)

In all proceedings relating to him, a minor capable of discernment may, without prejudice to the provisions as to his intervention or consent, be heard by the judge or the person appointed by the judge for that purpose. Where a minor so requests, his hearing may be denied only by a judgment setting out specially the grounds on which it is based.

. He may be heard alone, with a counsel or a person of his choice. Where that choice does not appear to be consonant with the welfare of the child, the judge may appoint another person.

The hearing of a minor does not confer on him the status of a party to the proceedings.

Art. 388-2

(Act n° 93-22 of 8 Jan. 1993)

Where, in a lawsuit, the interests of a minor appear to be in conflict with those of his statutory representatives, the judge of guardianships in the manner provided for in Article 389-3, or, failing which, the judge who is seized of the case shall appoint an ad hoc administrator who has the responsibility to represent him.

CHAPTER II - OF GUARDIANSHIP

(Act n° 64-1230 of 14 Dec. 1964)

Section I - Of the Cases Where either Statutory Administration or Guardianship Takes Place

Art. 389

(Act n° 85-1372 of 23 Dec. 1985)

Where parental authority is exercised in common by the twol parents, they are statutory administrators. In the other cases, statutory administration belongs to the parent who exercises parental authority.

Art. 389-1

(Act n° 85-1372 of 23 Dec. 1985)

Statutory administration is outright where the two parents exercise parental authority in common.

Art. 389-2

(Act n° 85-1372 of 23 Dec. 1985)

Statutory administration is placed under supervision of the judge of guardianships where one or the other of the two parents is dead or is "deprived of the exercise of parental authority" (Act n° 2002-305 of 4 March 2002); it shall be likewise "in case of unilateral exercise of parental authority" (Act n° 2002-305 of 4 March 2002).

Art. 389-3

A statutory administrator acts as an agent for the minor in all civil transactions, except cases where the law or usage authorizes minors to act for themselves.

Where his interests are in conflict with those of the minor, he must have an administrator ad hoc appointed by the judge of guardianships. "In the absence of any suit of the statutory administrator, the judge may undertake that appointment on request of the Government procurator's office, of the minor himself or of his own motion" (Act n° 93-22 of 8 Jan. 1993).

Property donated or bequeathed to a minor under the condition that it shall be administered by a third person is not subject to statutory administration. That third person administrator has the powers conferred on him by the gift or will; failing which, those of an administrator under judicial supervision.

Art. 389-4

(Act n° 75-617 of 11 July 1975)

In outright statutory administration, each of the "parents" (Act n° 85-1327 of 23 Dec. 1985) is deemed, with regard to third parties, to have received from the other the power to do alone the transactions for which a guardian would not need any authorization.

Art. 389-5

(Act n° 85-1372 of 23 Dec. 1985)

In outright statutory administration, the parents perform together the transactions that a guardian could do only with the authorization of the family council.

Failing agreement between the parents, a transaction must be authorized by the judge of guardianships.

Even by mutual agreement, the parents may neither sell amicably, nor contribute to a partnership an immovable or a business concern belonging to the minor, nor contract loans on his behalf, nor waive a right for him without the authorization of the judge of guardianships. The same authorization is required for an amicable partition and the statement of liquidation shall be approved in the way provided for in Article 466.

Where a transaction causes loss to the minor, the parents are liable for it jointly and severally.

Art. 389-6

(Act n° 75-617 of 11 July 1975)

In statutory administration under judicial supervision, an administrator must provide himself with an authorization from the judge of guardianships in order to perform the transactions that a guardian may do only with an authorization.

He may do the other transactions alone.

Art. 389-7

(Act n° 70-459 of 4 July 1970)

As to other issues, the rules of guardianship shall apply to statutory administration, with the adjustments resulting from the latter's being deprived of family council and supervisory guardian, and without prejudicing, on the other part, to the rights that the father and mother hold under Title Of Parental Authority in particular as regards the education of the child and the usufruct of his property.

Art. 390

A guardianship must be opened where the father and mother are both dead or are "deprived of the exercise of parental authority" (Act n° 2002-305 of 4 March 2002).

It must also be opened with regard to an illegitimate child where neither the father nor the mother have voluntarily acknowledged it.

There is no derogation to specific statutes governing the Children's aid service.

Art. 391

In the case of statutory administration under judicial supervision, the judge of guardianships may at any time, either of his own motion, or at the request of relatives by blood or marriage or of the Government procurator's office, decide to open guardianship, after hearing or summoning the statutory administrator, except in emergency. The latter may not, from the application and until final judgment, except in cases of emergency, enter into any transaction that would require the authorization of the family council were a guardianship opened.

The judge of guardianships may also decide, but only for serious reasons, to open a guardianship in the case of an outright statutory administration.

In both cases, where a guardianship is opened, the judge of guardianships shall convene the family council which may either name the statutory administrator as guardian, or designate another guardian.

Art. 392

Where an illegitimate child happens to be acknowledged by one of his parents after the opening of a guardianship, the judge of guardianships may, on request of that parent, decide to substitute statutory administration to guardianship under Article 389-2.

Section II - Of the Organization of a Guardianship

§ 1 - Of the Judge of Guardianships

Art. 393

The office of judge of guardianships is exercised by a judge of the tribunal d'instance in whose territorial jurisdiction the minor has his domicile.

Art. 394

Where the minor's domicile is transferred to another place, the guardian shall forthwith give notice of it to the judge of guardianships previously seized. The latter shall forward the file

of the guardianship to the judge of guardianships of the new domicile. Mention of that forwarding shall be kept in the court office of the tribunal d'instance.

Art. 395

A judge of guardianships shall exercise a general supervision over statutory administrations and guardianships of his jurisdiction.

He may convene statutory administrators, guardians and other organs of guardianship, require clarifications from, make observations to, and grant injunctions against them.

He may sentence to the fine provided for in the Code of Civil Procedure those who, without lawful excuse, did not comply with his injunctions.

Art. 396

The proceedings before a judge of guardianships shall be regulated by the Code of Civil Procedure.

§ 2 - Of Guardians

Art. 397

The individual right to select a guardian, relative or not, belongs only to the last dying of the father and mother, where he or she has kept, on the day of death, the exercise of statutory administration or guardianship.

Art. 398

That appointment may be made only in the form of a will or of a special declaration before a notaire.

Art. 399 and 400 [repealed]

Art. 401

A guardian selected by the father or mother may not be compelled to accept guardianship, unless he is furthermore within the class of the persons to whom, failing that special selection, the family council might have assign the duty thereof.

Art. 402

Where no guardian was selected by the last dying of the father and mother, guardianship of a [deleted, Act n° 2002-305 of 4 March 2002] child is conferred on the one of the ascendants who is of the closest degree.

Art. 403

In case of concurrence between ascendants of the same degree, the family council shall designate the one among them who will be guardian.

Art. 404

Where there is neither testamentary guardian nor ascendant guardian, or where the one who was designated in that capacity happens to cease his office, a guardian shall be given to the minor by the family council.

Art. 405

That council shall be convened by the judge of guardianships, either of his own motion or on submission therefor made to him by relatives by blood or marriage of the father and mother, creditors or other parties concerned or the Government procurator's office. Any person may complain to the judge against the fact that will give occasion to the appointment of a guardian.

Art. 406

A guardian shall be designated for the duration of a guardianship.

The family council may however provide for his replacement in the course of the guardianship where serious circumstances so require, without prejudice to cases of excuse, incapacity or removal.

§ 3 - Of Family Council

Art. 407

A family council is composed of four to six members, including the supervisory guardian, but not the guardian or the judge of guardianships.

They shall be designated by the judge for the duration of the guardianship. The judge may, however, without prejudice to Articles 428 and following, provide of his own motion for the replacement of one or several members in the course of guardianship in order to respond to changes which may occur in the condition of the parties.

Art. 408

The judge of guardianships shall select the members of the family council among the relatives by blood or marriage of the father and mother of the minor, in appraising all the circumstances of the case: nearness of degree, place of residence, ages and abilities of the parties concerned.

He must avoid, as far as possible, leaving one of the two lines without representation. But he shall have regard, above all, to the usual relations which the father and mother had with the various relatives by blood or marriage, as well as to the interest that those relatives have shown or appear to be able to show to the person of the child.

Art. 409

The judge of guardianships may also call upon, to form part of the family council, friends, neighbours or any other persons whom he considers able to take interest in the child.

Art. 410

A family council is convened by the judge of guardianships. It shall be so where convening is required either by two of its members, or by the guardian or supervisory guardian, or by the minor himself provided he is of the full age of "sixteen years" (Act n° 74-631 of 5 July 1974).

(Act n° 98-381 of 14 May 1998) A family council shall also be convened on the request of a minor under sixteen and capable of discernment, unless otherwise decided with particular reasons by the judge.

Art. 411

Notice convening a meeting must be served at least eight days before the meeting.

(Act n° 98-281 of 14 May 1998) Previously to that meeting, the judge shall hold a hearing of the minor capable of discernment in the way provided for in Article 388-1.

Art. 412

Members of the family council are obliged to attend meetings in person. Each one, however, may be represented by a relative by blood or marriage of the father and mother of the minor, where that relative is not already, in his own name, a member of the family council. A husband may represent his wife or reciprocally.

Members of the family council who, without a lawful excuse, are neither present nor validly represented, shall incur the fine provided for by the Code of Civil Procedure.

Art. 413

Where the judge of guardianships considers that a judgment may be handed down without the holding of a meeting being necessary, he shall notify to each one of the members of the council the text of the decision to be taken with appropriate clarifications.

Each of the members shall cast his vote by letter missive within the period fixed to him by the judge; failing which, he shall incur the fine provided for by the Code of Civil Procedure.

Art. 414

A family council may deliberate only where at least half of its members are present or represented. Where that number is not attained, the judge may, either adjourn the meeting or, in case of emergency, take the decision himself.

Art. 415

A family council is presided over by the judge of guardianships, who is entitled to vote with a casting vote in case of a parity of votes.

The guardian must attend the meetings; he is heard but does not vote, nor does the supervisory guardian where he represents the guardian.

(Act n° 98-381 of 14 May 1998) A minor capable of discernment may, where the judge does not consider it contrary to his welfare, attend meetings in an advisory capacity. A minor over the full age of sixteen must be called where the meeting was convened on his requisition.

In no case may his consent to a transaction discharge the guardian and the other organs of guardianship from their liabilities.

Art. 416

Resolutions of a family council are void where they were obtained by fraud or deception, or where substantive formalities were omitted.

Invalidity is remedied by a new resolution equivalent to a confirmation under Article 1338.

An action for annulment may be brought by the guardian, the supervisory guardian, members of the family council or by the Government procurator's office, within two years following the resolution, as well as by the ward become of age or emancipated, within two years following his coming of age or his emancipation. Prescription does not run where there was deception or fraud, until the fact is discovered.

Transactions performed under a nullified resolution are themselves voidable in the same manner. The period, however, runs from the transaction and not from the resolution.

§ 4 - Of the Other Organs of Guardianship

Art. 417

The family council, having regard to the abilities of the persons concerned and the composition of the patrimony to be administered, may decide that the guardianship will be divided between a guardian to the person and a guardian to the property, or that the management of particular property will be entrusted to a deputy guardian.

Guardians so appointed shall be independent, and not liable to each other, in their respective functions, unless otherwise ordered by the family council.

Art. 418

Guardianship is a personal office.

It does not extend to a guardian's spouse. Where, however, that spouse intrudes into the management of the ward's patrimony, he or she becomes jointly and severally liable with the guardian for all management subsequent to the intrusion.

Art. 419

Guardianship does not extend to a guardian's heirs. The latter are liable only for the management of their predecessor; and, where they are adults, they are bound to continue it until the appointment of a new guardian.

Art. 420

In every guardianship, there shall be a supervisory guardian, appointed by the family council among its members.

The functions of a supervisory guardian consist in the supervision of the management of the guardian and in representing a minor where his interests conflict with those of the guardian.

Where he observes some mismanagement, he must, on pain of incurring personal liability, immediately inform the judge of guardianships of it.

Art. 421

Where a guardian intrudes into the management before the appointment of a supervisory guardian, he may be dismissed from the guardianship, if there was fraud on his part, without prejudice to compensation due to the minor.

Art. 422 [repealed]

Art. 423

Where a guardian is a relative by blood or marriage of the minor only in one line, the supervisory guardian shall be taken, as far as possible, from the other line.

Art. 424

A supervisory guardian does not replace as of right a guardian who died or became under a disability, or who disclaims the guardianship; but he then shall, on pain of damages that may result from it to the minor, seek the appointment of a new guardian.

Art. 425

The office of a supervisory guardian comes to an end at the same time as that of the guardian.

Art. 426

A guardian may not seek the dismissal of a supervisory guardian or vote in the family councils that are convened for that purpose.

§ 5 - Of the Duties of a Guardian

Art. 427

Guardianship, a protection due to a child, is a public office.

Art. 428

Save the father and mother in the case of Article 391, persons to whom age, illness, remoteness, exceptionally absorbing professional or family activities or a previous guardianship render that new office particularly heavy, may be dispensed from guardianship.

Art. 429

Save the father and mother, may be discharged from guardianship persons who cannot continue to perform it because of one of the causes provided for by the preceding Article, where it occurred since the appointment.

Art. 430 and 431 [repealed]

Art. 432

One who was not a relative by blood or marriage of the father and mother of a minor may not be compelled to accept a guardianship.

Art. 433

(Act n° 89-487 of 10 July 1989)

Where a guardianship remains vacant, the judge of guardianships shall remit it to the State if it concerns an adult, and to the Children's aid service if it concerns a minor.

Art. 434

Excuses that dispense or discharge from a guardianship may be extended to a supervisory guardian and even to members of the family council, but only according to the seriousness of the cause.

Art. 435 and 436 [repealed]

Art. 437

A family council shall rule on the excuses of the guardian and the supervisory guardian; the judge of guardianships on the excuses offered by members of the family council.

Art. 438

Where an appointed guardian is present in person at the resolution which remits guardianship to him, he shall immediately, and on pain of having all subsequent claims declared non-admissible, offer his excuses on which the family council shall deliberate.

Art. 439

Where he was not present in person, he shall, within eight days of notice of appointment being served upon him, have the family council convened to deliberate on his excuses.

Art. 440

Where his excuses are rejected, he may make application to the tribunal de grande instance to have them accepted; but he is bound to administer temporarily pending suit.

Art. 441

The various duties of guardianship may be assumed by any person, without distinction of sex, but with reservation of the causes of incapacity, exclusion, dismissal or challenge expressed below.

Art. 442

Are incapable of the various duties of guardianship:

1° Minors, save the father or mother;

2° Adults under guardianship, insane persons and adults under curatorship.

Art. 443

Are excluded or dismissed by operation of law from the various duties of guardianship:

1° Those who were sentenced to an afflictive or infamous punishment or to whom exercise of the duties of guardianship was forbidden under Article 42 [131-26] of the Penal Code.

They may, however, be admitted to the guardianship of their own children, upon assent of the family council.

2° Those who have been deprived of parental authority.

Art. 444

May be excluded or dismissed from the various duties of guardianship people of notorious misconduct and those whose improbity, usual negligence or inability for business has been established.

Art. 445

Those who have, or whose father and mother have with the minor a controversy calling into question the status of the latter or a significant part of his property must resign and may be challenged as to the various duties of guardianship.

Art. 446

Where a member of the family council is subject to exclusion, dismissal or challenge, the judge of guardianships shall decide himself, either of his own motion, or on demand of the guardian, of the supervisory guardian or of the Government procurator's office.

Art. 447

Where a cause for exclusion, dismissal or challenge relates to a guardian or a supervisory guardian, the family council shall decide. It shall be convened by the judge of guardianships, either of his own motion, or on demand made by the persons mentioned in Article 410 or by the Government procurator's office.

Art. 448

A guardian or supervisory guardian may be excluded, dismissed or challenged only after being heard or summoned.

Where he accepts the resolution, mention shall be made thereof and a new guardian or supervisory guardian shall take office at once.

Where he does not accept, he may make an application to vacate under the rules of the Code of Civil Procedure; but the judge of guardianships may, if he considers that there is an emergency, prescribe forthwith interim measures for the welfare of the minor.

Section III - Of the Functioning of a Guardianship

Art. 449

A family council shall regulate the general conditions of support and education of the child, having regard to the intention which the father and mother may have expressed on this subject.

Art. 450

A guardian shall take care of the person of the minor and shall represent him in all civil transactions, save the cases where the law or usage authorizes minors to act for themselves.

He shall administer his property like a prudent administrator and be liable for the damages that would result from his mismanagement.

He may not buy the minor's property or take it on lease for rent or farm lease, unless the family council has authorized the supervisory guardian to make a lease with him, or accept the assignment of any right or claim against his ward.

Art. 451

A guardian shall administer and act in that capacity from the day of his appointment, where it was made in his presence; otherwise, from the day when notice of it was served upon him.

Within the ten days which follow, he shall require the lifting of seals, if they were affixed, and shall at once have an inventory of the minor's property made, in the presence of the supervisory guardian. An office copy of that inventory shall be sent to the judge of guardianships.

Failing an inventory within the prescribed period, the supervisory guardian shall refer the matter to the judge of guardianships for the purpose of its being made, on pain of being jointly and severally liable with the guardian for all orders rendered in favour of the ward. Default of inventory shall authorize the ward to make proof of the value and composition of his property by any means, even common repute.

Where a minor owes something to the guardian, the latter shall so declare in the inventory, on pain of forfeiture, on the demand that the public officer is required to make to him, and mention of which shall be made in the memorandum.

Art. 452

Within the three months which follow the initiating of a guardianship, a guardian shall convert into registered securities or deposit all the bearer securities belonging to the minor into an account opened in the name of the minor and mentioning the minority, with a depositary accredited by the Government to receive funds and securities of wards, unless he is authorized to sell them as provided for in Articles 457 and 468.

He shall similarly, and under the same reservation, convert into registered securities or deposit with an accredited depositary the bearer securities that the minor receives afterwards, in whatever manner, within the same period of three months after the entry into possession.

He may not withdraw the bearer securities deposited as provided for in the preceding paragraphs, or convert registered securities into bearer securities, unless conversion is made through a depositary accredited by the Government

The family council may, if necessary, fix a longer period for the performance of such operations.

Art. 453

A guardian may give a receipt for funds which he receives for the account of the ward only with the counter-signature of the supervisory guardian

Those funds shall be deposited by him into an account opened in the name of the minor and mentioning the minority, with a depositary accredited by the Government to receive funds and securities of wards.

Deposit is to be made within the period of one month after the receiving of funds; where that period elapses, the guardian is, as of right, debtor for the interests.

Art. 454

On the initiating of a guardianship, the family council shall determine at a roof estimate, and according to the importance of the property managed, the sum annually available for the

support and education of the ward, the expenses of administration of his property, as well as possibly the allowance that may be granted to the guardian.

The same resolution shall specify whether the guardian is authorized to put on the account the salaries of particulars administrators or agents for whose assistance he may ask, under his own responsibility.

The family council may also authorize the guardian to make a contract for the management of the marketable securities of the ward. The resolution shall designate the contracting third party having regard to his solvency and professional experience, and specify the terms of the contract. Notwithstanding any stipulation to the contrary, the contract may, at any time, be terminated in the name of the ward.

Art. 455

A family council shall determine the sum at which shall begin for the guardian the responsibility to reinvest the liquid capital of the minor, as well as the surplus of the income. That reinvestment shall be made within a period of six months, save extension by the family council. Where that period elapses, the guardian is as of right accountable for the interests.

The nature of the property that may be acquired in reinvestment shall be determined by the family council, either in advance, or on the occasion of each transaction.

In any case, third parties shall not be guarantors of the reinvestment.

Art. 456

As a representative of a minor, a guardian shall perform all acts of administration alone.

He may thus transfer, for value, movables of current use and property having character of profits.

Leases agreed to by a guardian do not confer on the lessee, against a minor become of age, any right to renewal or any right to remain on the premises at the expiry of the lease, notwithstanding any statutory provision to the contrary. Those provisions, however, shall not apply to leases granted before the instituting of the guardianship and renewed by the guardian.

Transactions which, for the management of the marketable securities of the ward, must be deemed acts of administration entering into the responsibilities and powers, either of statutory administrators and guardians, or of accredited depositaries, shall be determined by decree in Conseil d'État.

Art. 457

A guardian may not, without being thereto authorized by the family council, make transfers in the name of the minor.

Without that authorization, he may not, in particular, borrow for the ward, or dispose of or encumber with real rights immovables, business concerns, marketable securities and other incorporeal rights, or movables which are precious or constitute an important part of the ward's patrimony.

Art. 458

In giving its authorization, a family council may prescribe all steps it considers appropriate, in particular as to the reinvestment of the funds.

Art. 459

A sale of immovables and business concerns that belong to a minor shall be done publicly by auction, in the presence of the supervisory guardian, subject to the conditions laid down by Articles 953 and following of the Code of Civil Procedure [Articles 1271 and following of the new Code of Civil Procedure].

A family council may, however, authorize an amicable sale, either by public auction with an opening bid it shall fix, or by private agreement, at prices and terms it shall determine. In case of amicable auction, an outbidding may always be made, as provided for in the Code of Civil Procedure.

A contribution to a partnership of an immovable or business concern may take place by private agreement It must be authorized by the family council on the report of an expert whom the judge of guardianships shall designate.

Marketable securities registered on an official list shall be sold through the agency of a stockbroker [a broker-dealer].

Other marketable securities shall be sold by auction through the agency of a stockbroker [a broker-dealer] or a notaire designated in the resolution which authorizes the sale. The family council may, however, on the report of an expert designated by the judge of guardianships, authorize the sale of it by private agreement at prices and under terms it shall determine.

Art. 460

The authorization required by Article 457 for the transfer of property of a minor shall not apply where a judgment has ordered a sale by auction on request of a co-owner of the property held undivided.

Art. 461

A guardian may accept a succession accruing to a minor only under benefit of inventory. The family council may, however, by a special resolution, authorize him to accept it unconditionally where the assets manifestly exceed the liabilities.

A guardian may not repudiate a succession accruing to a minor without an authorization of the family council.

Art. 462

In case the succession repudiated in the name of a minor has not been accepted by any one else, it may be retaken, either by the guardian authorized for that purpose by a new resolution of the family council, or by the minor when he has come of age; but in the condition in which it is at the time it is retaken and without any possibility of review of the sales and other transactions lawfully performed during the vacancy.

Art. 463

A guardian may accept without authorization gifts and specific legacies accruing to the ward, unless they are encumbered with charges.

Art. 464

A guardian may, without authorization, lodge a claim relating to patrimonial rights of the minor. He may likewise abandon the proceedings. The family council may enjoin him to initiate an action, to abandon it, or to make offers for the purpose of abandonment, on pain of being liable.

A guardian may defend alone an action brought against the minor, but he may acquiesce in it only with the authorization of the family council.

An authorization of the family council is always required for actions relating to non-patrimonial rights.

Art. 465

A guardian may not, without an authorization of the family council, file an application for partition in the name of the minor; but he may, without that authorization, reply to an application for partition brought against the minor or join in a collective petition for the purpose of partition, lodged by all the parties concerned under Article 822.

Art. 466

In order to produce with regard to a minor the same full effect as it would do between adults, a partition must be made in court, in accordance with the provisions of Articles 815 and following.

The family council may, however, authorize an amicable partition, even partial. In that case, it shall designate a notaire to proceed thereto. The statement of liquidation, to which shall be attached the resolution of the family council, must be submitted to the approval of the tribunal de grande instance.

Any other partition shall be considered as only provisional.

Art. 467

A guardian may compromise in the name of the minor only after having the family council approve the terms of the compromise.

Art. 468

In all cases where the authorization of the family council is required for the validity of an act of the guardian, it may be substituted by that of the judge of guardianships, where the act to

be made involves property the capital value of which does not exceed a sum that is fixed by decree1.

The judge of guardianships may also, on request of a guardian, authorize a sale of marketable securities instead and in place of the family council where it appears to him that there would be danger in delay, but on condition that a report be made as soon as possible to the family council which will decide on the reinvestment.

1 D. n° 65-961 of 5 Nov. 1965 : 1000 000 F (15 300 €)

Section IV - Of the Accounts of Guardianship and Of Liabilities

Art. 469

Every guardian is accountable for his management when it comes to an end.

Art. 470

Before the end of a guardianship, a guardian is bound to deliver each year to the supervisory guardian an account of management. That account shall be written and delivered without cost, on unstamped paper.

(Act n° 95-125 of 8 Feb. 1995) The supervisory guardian shall transmit the account with his comments to the clerk in chief of the tribunal d'instance who may ask him any information. In case of difficulty, the clerk in chief shall report to the judge of guardianships who may convene the family council, without prejudice to the power of the judge to get communication of the account and supervise it at any time.

Where a minor reaches the full age of "sixteen years" (Act n° 74-631 of 5 July 1974), the judge of guardianships may decide that the account shall be communicated to him.

Art. 471

Within the three months following the end of a guardianship, a final account shall be rendered, either to the minor himself, having become of age or emancipated, or to his heirs. The guardian shall advance the costs of it; they shall be charged to the ward.

A guardian must be allowed therein all expenses sufficiently warranted and made for a useful purpose.

Where a guardian happens to cease his functions before the end of the guardianship, he shall render a recapitulatory account of his management to the new guardian who may accept it only with the authorization of the family council, upon the comments of the supervisory guardian.

Art. 472

A minor come of age or emancipated may approve an account of guardianship only one month after the guardian gave it to him, against a receipt, with supporting documents. An approval given before the end of the period is void.

Also void is any agreement entered into between the ward, become of age or emancipated, and him who was his guardian where it has the effect of releasing the latter, in whole or in part, from his obligation to render account.

Where an account gives rise to controversies, they shall be prosecuted and adjudged as provided for in the Title Of Accounting of the Code of Civil Procedure.

Art. 473

Approval of an account does not prejudice actions for compensation that may belong to a ward against a guardian or other organs of the guardianship.

The State is alone liable with regard to the ward, save its action of recourse if there is occasion, for damage resulting from whatever fault committed in the functioning of the guardianship, either by the judge of guardianships or his clerk, "or by the clerk in chief of the tribunal d'instance" (Act n° 95-125 of 8 Feb. 1995), or by the public administrator in charge of a vacant guardianship under Article 433.

An action for damages by the ward against the State shall be brought in all cases before the tribunal de grande instance.

Art. 474

The sum to which the balance due by the guardian may amount bears interest by operation of law from the approval of the account and, at the latest, three months after the end of the guardianship.

Interests on what may be due to the guardian by the minor run only from the day of demand for payment which followed the approval of the account.

Art. 475

Any action by the minor against a guardian, organs of the guardianship or the State relating to guardianship matters is time-barred after five years, counting from majority, even where there has been emancipation.

CHAPTER III - OF EMANCIPATION

(Act n° 64-123 of 14 Dec. 1964)

Art. 476

(Act n° 74-631 of 5 July 1974)

A minor is emancipated as a matter of right by marriage.

Art. 477

(Act n° 74-631 of 5 July 1974)

A minor, even unmarried, may be emancipated when he has reached the full age of sixteen years.

"After the minor has been heard" (Act n° 93-22 of 8 Jan. 1993), that emancipation shall be pronounced, if there are proper reasons, by the judge of guardianships, on request of the father and mother or of one of them.

Where the request is filed by only one parent, the judge shall decide after hearing the other, unless the latter is unable to express his or her intention.

Art. 478

(Act n° 74-631 of 5 July 1974)

A minor left without father and mother may in the same manner be emancipated on request of the family council.

Art. 479

Where, in the case of the preceding Article, the guardian having taken no step, a member of the family council is of opinion that the minor can be emancipated, he may require the judge of guardianships to convene the council in order to consider the matter. The minor himself may request that convening.

Art. 480

The account of the administration or guardianship, as the case may be, is rendered to an emancipated minor in the way provided for in Article 471.

Art. 481

An emancipated minor is capable, like an adult, of all transactions of civil life.

He must however, in order to marry or give himself in adoption, comply with the same rules as if he was not emancipated.

Art. 482

An emancipated minor ceases to be under the authority of his father and mother.

The latter are not liable as of right, in their sole capacity as father or mother, for damage that he may cause to others after his emancipation.

Art. 483 to 486 [repealed]

Art. 487

(Act n° 74-631 of 5 July 1974)

An emancipated minor may not be a merchant.

TITLE XI

OF MAJORITY AND OF ADULTS WHO ARE PROTECTED BY THE LAW

(Act n° 68-5 of 3 Jan. 1968)

CHAPTER I - GENERAL PROVISIONS

Art. 488

(Act n° 74-631 of 5 July 1974)

Majority is fixed at the full age of eighteen years; at that age one is capable of all the transactions of civil life.

Nevertheless, an adult whom an impairing of his personal faculties places in the impossibility of providing alone for his interests is protected by the law, either on the occasion of a specific transaction, or in a continuous manner.

May be likewise protected an adult who, because of his prodigality, insobriety or idleness, is in danger to fall into need or compromises the fulfilment of his family obligations.

Art. 489

In order to enter into a valid transaction, it is necessary to be of sound mind. But it is for those who seek annulment on that ground to prove the existence of a mental disorder at the time of the transaction.

During the lifetime of an individual, an action for annulment may be brought only by him, or by his guardian or curator, where one of them was appointed for him afterwards. It is time-barred after the period provided for in Article 1304.

Art. 489-1

After his death, transactions entered into by an individual, other than a gift inter vivos or a will, may be contested on the ground provided for in the preceding Article only in the cases listed below:

1° Where a transaction in itself discloses proof of a mental disorder;

2° Where it was entered into in a time when the individual was placed under judicial supervision;

3° Where a petition was initiated before the death in order to have a guardianship or curatorship opened.

Art. 489-2

A person who has caused damage to another when he was under the influence of a mental disorder is nonetheless liable to compensation.

Art. 490

Where mental faculties are disordered by an illness, an infirmity or feebleness due to age, the interests of the person are safeguarded by one of the systems of protection provided for in the following Chapters.

The same systems of protection apply to the impairing of bodily faculties if it prevents the expression of intention.

An impairing of mental or bodily faculties must be medically established.

Art. 490-1

The methods of medical treatment, in particular as to the choice between hospitalisation and care at home, are independent of the system of protection relating to civil interests.

Reciprocally, the system relating to civil interests is independent of the medical treatment.

Nevertheless, judgments by which the judge of guardianships organizes the protection of civil interests must be preceded by an advice of the attending physician.

Art. 490-2

Whatever the system of protection applicable may be, the lodging of the protected person and the furniture with which it is equipped must be kept at his disposal as long as it is possible.

Power of administration, as regards that property, allows only agreements for precarious enjoyment, which shall cease from the return of the protected person, despite any provision or stipulation to the contrary.

Where it becomes necessary or it is in the interest of the protected person to dispose of rights relating to lodging or to transfer the furniture, the transaction must be approved by the judge of guardianships, after advice of the attending physician, without prejudice to the other formalities which the nature of the property may require. Souvenirs and other objects of a personal character must always be excepted from transfer and kept at the disposal of the protected person, where appropriate, thanks to the institution of treatment.

Art. 490-3

The Government procurator of the place of treatment and the judge of guardianships may visit or cause to be visited adults protected by law, whatever the system of protection applicable to them may be.

CHAPTER II - OF ADULTS UNDER JUDICIAL SUPERVISION

Art. 491

An adult who, for one of the causes provided for in Article 490, needs to be protected in the transactions of civil life, may be placed under judicial supervision.

Art. 491-1

Judicial supervision results from a declaration made to the Government procurator in the way provided for by the Code of Public Health.

A judge of guardianships, to whom proceedings in guardianship or curatorship have been referred, may place the person whom it should be advisable to protect under judicial supervision, pending suit, by an interim order transmitted to the Government procurator.

Art. 491-2

An adult placed under judicial supervision keeps the exercise of his rights.

However, the transactions he entered into and the undertakings he contracted may be rescinded for ordinary loss or abated in case of excess, even though they may not be annulled under Article 489.

Courts shall take into consideration, on this subject, the wealth of the protected person, the good or bad faith of those who dealt with him, the usefulness or uselessness of the transaction. An action for rescission or abatement may be brought, during the lifetime of the person, by all those who would have standing to petition for the opening of a guardianship and, after his death, by his heirs. It is time-barred after the period provided for in Article 1304.

Art. 491-3

Where a person has appointed an agent for the purpose of administering his property, either before, or after being placed under judicial supervision, that agency must be fulfilled.

However, where a power of attorney expressly mentions that it was given on account of the period of supervision, it may, during that period, be revoked by the principal only with the authorization of the judge of guardianships.

In all cases, the judge, either of his own motion, or on request of one of the parties who would have standing to request the opening of a guardianship, may order the revocation of the agency.

He may also, even of his own motion, order that "the accounts be submitted to the clerk in chief of the tribunal d'instance for approval, without prejudice to the power of the judge to exercise himself that supervision" (Act n° 95-125 of 8 Feb. 1995).

Art. 491-4

In the absence of an agency, the rules of management of another’s business shall be followed.

However, those who would have standing to request the opening of a guardianship are under the obligation to do the acts of preservation necessitated by the management of the patrimony of the protected person where they had knowledge of their urgency as well as of the declaration for purpose of supervision. The same obligation falls under the same conditions on the director of the treating institution or, possibly, on the one who shelters at his home the person under supervision.

An obligation to do acts of preservation involves, with regard to third parties, the corresponding power.

Art. 491-5

Where there is occasion to act outside the cases defined in the preceding Article, any party concerned may give notice thereof to the judge of guardianships.

The judge may, either appoint a special agent for the purpose of doing a specific transaction or a series of transactions of the same nature, within the limits of what a guardian might do without the authorization of the family council, or decide of his own motion to open a guardianship or a curatorship, or direct the party concerned to instigate himself the opening where he is one of those having standing to request it

Art. 491-6

Judicial supervision comes to an end with a new declaration certifying that the previous situation has come to an end, by lapse of the declaration under the periods of the Code of Civil Procedure or by its cancellation upon decision of the Government procurator.

It comes also to an end with the opening of a guardianship or of a curatorship from the day when the new system of protection takes effect.

CHAPTER III - OF ADULTS IN GUARDIANSHIP

Art. 492

A guardianship shall be opened where an adult, for one of the causes provided for in Article 490, needs to be represented in a continuous manner in the transactions of civil life.

Art. 493

The opening of a guardianship shall be ordered by the judge of guardianships on request of the person whom there is occasion to protect, of his or her spouse, unless community of living has ceased between them, of his or her ascendants or descendants, brothers and sisters, of the curator or of the Government procurator; it may also opened by the judge of his own motion.

Other relatives by blood or marriage, or friends, may only make known to the judge the cause that could justify the opening of a guardianship. It shall be likewise with the attending physician and the director of the institution.

The persons referred to in the two preceding paragraphs may, even where they did not intervene into the case, appeal to the tribunal de grande instance against a judgment which opened a guardianship.

Art. 493-1

The judge may order the opening of a guardianship only where the impairing of mental or bodily faculties of the sick person was ascertained by a specialist chosen from a list established by the Government procurator.

The opening of a guardianship shall be ordered in the way provided for in the Code of Civil Procedure.

Art. 493-2

Judgments opening, modifying or withdrawing a guardianship may be enforced against third parties only two months after mention of them was made in the margin of the record of birth of the protected person, as provided for in the Code of Civil Procedure.

Even failing that mention, they are nevertheless enforceable against third parties who had personal knowledge of them.

Art. 494

A guardianship may be opened for an emancipated minor as for an adult.

As regards a non-emancipated minor, a petition may even be initiated and adjudged during the last year of minority; but guardianship shall take effect only from the day when he comes of age.

Art. 495

Shall apply also to guardianships of adults the rules prescribed by Sections 2, 3 and 4 of Chapter II of Title X of this Book for guardianships of minors, save, however, those which relate to the education of the child and, in addition, under the following amendments.

Art. 496

A spouse is the guardian of the other spouse, unless community of living has ceased between them or the judge is of opinion that another reason prevents his or her being entrusted with guardianship. All other guardians are dative.

A guardianship of an adult may be conferred on a juridical person.

Art. 496-1

Nobody, except the spouse, descendants and juridical persons may be compelled to hold guardianship of an adult beyond five years. On the expiry of that period, the guardian may request and shall gain his replacement.

Art. 496-2

An attending physician may not be a guardian or a supervisory guardian of his patient. But the judge of guardianships may always call on him to participate in the family council in an advisory capacity.

A guardianship may not be conferred on a treating institution, or on any person holding therein a gainful occupation unless they are one of those who had standing to request the opening of a guardianship. An executive employee of the institution may however be designated as manager of the guardianship in the circumstances referred to in Article 499.

Art. 497

Where there is "a relative by blood or by marriage" (Act n° 96-452 of 28 May 1996) qualified for managing the property, the judge of guardianships may decide that he shall manage it as a statutory administrator, without a supervisory guardian or a family council, in accordance with the rules that apply, as regards the property of a minor, to statutory administration under judicial supervision.

Art. 498

There is no occasion to open a guardianship which would devolve on a spouse where the interests of a protected person can be provided for adequately in accordance with the matrimonial regime and in particular with the rules of Articles 217 and 219, 1426 and 1429.

Art. 499

Where, in consideration of the composition of the property to be managed, the judge of guardianships considers it useless to establish a complete guardianship, he may limit himself to designate as manager of the guardianship, without supervisory guardian or family council, either an executive employee belonging to the administrative staff of the treating institution, or a special administrator, chosen in the way provided for in a decree in Conseil d'État.

Art. 500

A manager of a guardianship shall collect the incomes of the protected person and apply them to the support and treatment of the latter and discharge of the maintenance obligations for which he may be liable. Where there is an excess, he shall deposit it into an account which he must open with an accredited depositary. Each year, he shall render account of his management directly to the "clerk in chief of the tribunal d'instance, without prejudice to the power of the judge to request at any time from the clerk in chief communication of the account of management and direct transmittal of the accounting" (Act n° 95-125 of 8 Feb. 1995).

Where other acts become necessary, he shall refer the matter to the judge who may either authorize him to do them, or decide to establish the guardianship completely.

Art. 501

When opening a guardianship or in a subsequent judgment, the judge, upon opinion of the attending physician, may list some transactions that the person in guardianship will have the capacity to enter into himself, either alone, or with the assistance of the guardian or of the person standing in his stead.

Art. 502

All transactions entered into by a protected person after the judgment of opening of a guardianship are void as of right, subject to the provisions of Article 493-2.

Art. 503

Prior transactions may be annulled where the cause which determined the opening of the guardianship existed notoriously at the time when they were made.

Art. 504

A will made after the opening of a guardianship is void as of right.

A will previously made remains valid, unless it is proved that, since the opening of the guardianship, the reason which determined the testator to so dispose has disappeared.

Art. 505

With authorization of the family council, gifts may be made in the name of an adult in guardianship, but only in favour of his descendants and by way of advancement, or in favour of the spouse.

Art. 506

Even in the cases of articles 497 and 499, marriage of an adult in guardianship is allowed only with the consent of a family council specially convened in order to consider the matter. The council may decide only after hearing the future spouses.

There is no occasion for a meeting of the family council where the father and mother both give their consent to the marriage.

In all cases, the opinion of the attending physician is required.

Art. 506-1

(Act n° 99-944 of 15 Nov. 1999)

Adults in guardianship may not enter into a civil covenant of solidarity.

Where, during a civil covenant of solidarity, one of the partners is placed under guardianship, the guardian authorized by the family council or, failing which, the judge of guardianships may put an end to the covenant in the way provided for in Article 515-7, paragraph 1 or 2.

Where the initiative to cancel the covenant is taken by the other partner, the notice mentioned in the same Article, paragraph 2 and 3, shall be served on the guardian.

Art. 507

Guardianship comes to an end with the causes that determined it; nevertheless removal of it may be ordered only in complying with the formalities prescribed for attaining its opening and a person in guardianship may resume the exercise of his rights only after a judgment of removal.

The methods of review provided for by Article 493, paragraph 3, may be resorted to only against judgments that refuse to give removal of a guardianship.

CHAPTER IV - OF ADULTS IN CURATORSHIP

Art. 508

Where an adult, for one of the causes provided for in Article 490, without being unable to act for himself, has need of being advised or supervised in transactions of civil life, he may be placed under a system of curatorship.

Art. 508-1

An adult to whom Article 488, paragraph 3, refers may also be placed under a system of curatorship.

Art. 509

Curatorship is opened and comes to an end in the same way as a guardianship of adults.

It is subject to the same requirements as to notice.

Art. 509-1

In a curatorship there is no other organ than the curator.

A spouse is curator for the other spouse unless community of living has ceased between them or the judge is of opinion that another reason prevents his or her being entrusted with curatorship. All other curators must be appointed by the judge of guardianships.

Art. 509-2

The provisions relating to the duties of a guardian shall apply to the office of a curator, under the amendments which guardianship of adults involves.

Art. 510

An adult in curatorship may not, without the assistance of his curator, enter into any transaction which, under the system of guardianship of adults, requires an authorization of the family council. Nor may he, without that assistance, receive capital or make investment of it.

Where a curator refuses his assistance to a transaction, a person in curatorship may request a suppletory authorization from the judge of guardianships.

Art. 510-1

Where an adult in curatorship has entered alone into a transaction for which the assistance of a curator was required, himself or the curator may seek the annulment of it.

An action for annulment is time-barred after the period provided for in Article 1304, or even, before expiry of that period, in consequence of the approval that the curator may have given to the transaction.

Art. 510-2

Any service made on an adult in curatorship may be also made on the curator, on pain of invalidity.

Art. 510-3

In cases where the assistance of a curator was not required by statute, transactions into which an adult in curatorship may have entered alone remain nevertheless subject to actions for rescission or abatement regulated by Article 491-2, as though they were entered into by a person under judicial supervision.

Art. 511

When opening a curatorship or in a subsequent judgment, the judge, upon opinion of the attending physician, may list some transactions that the person in curatorship will have the capacity to enter into alone, in derogation from Article 510, or, inversely, add other transactions to those for which that Article requires the assistance of a curator.

Art. 512

When appointing a curator, the judge may order that he alone shall receive the incomes of the person in curatorship, settle expenses with regard to third parties, and deposit the excess, if any, into an account opened with an accredited depositary.

A curator appointed with that task shall render an account of his management each year to the "clerk in chief of the tribunal d'instance, without prejudice to the power of the judge to request at any time from the clerk in chief communication of the account of management and direct transmittal of the accounting" (Act n° 95-125 of 8 Feb. 1995). .

Art. 513

A person in curatorship may freely make his will, except for application of Article 901, if there is occasion.

He may make a gift only with the assistance of his curator.

Art. 514

As regards marriage of an adult in curatorship, the consent of the curator is required; failing which, that of the judge of guardianships.

Art. 515 [repealed]

TITLE XII

OF CIVIL COVENANTS OF SOLIDARITY AND OF CONCUBINAGE

(Act n° 99-944 of 15 Nov. 1999)

CHAPTER I - OF CIVIL COVENANTS OF SOLIDARITY

Art. 515-1

A civil covenant of solidarity is a contract entered into by two natural persons of age, of different sexes or of a same sex, to organize their common life.

Art. 515-2

On pain of nullity, there may not be a civil covenant of solidarity:

1° Between ascendants and descendants in direct line, between relatives by marriage in direct line and between collaterals until the third degree inclusive;

2° Between two persons of whom one at least is bound by the bonds of marriage;

3° Between two persons of whom one at least is already bound by a civil covenant of solidarity.

Art. 515-3

Two persons who enter into a civil covenant of solidarity shall make a joint declaration of it at the court office of the tribunal d'instance under the jurisdiction of which they fix their common residence.

On pain of dismissal, they shall file with the clerk the agreement concluded between them in duplicate original and add the documents of civil status which allow to establish the validity of the transaction with respect to Article 515-2, as well as a certificate of the court office of the tribunal d'instance of their places of birth or, in case of birth abroad, of the court office of the tribunal de grande instance of Paris, attesting that they are not already bound by a civil covenant of solidarity.

After the filing of the set of documents, the clerk shall enter that declaration into a register.

The clerk shall countersign and date the two originals of the agreement and give them back to each partner.

He shall have a mention of the declaration entered into a register held in the court office of the tribunal d'instance of the place of birth of each partner or, in case of birth abroad, in the court office of the tribunal de grande instance of Paris.

An entry in the register of the place of residence shall attribute an undisputable date to the civil covenant of solidarity and render it effective against third parties.

Any amendment to the covenant shall be the subject of a joint declaration entered at the court office that received the initial transaction, to which shall be added, on pain of dismissal and in duplicate original, the instrument amending the agreement. The formalities provided for in paragraph 4 shall apply.

Abroad, the entry of a joint declaration of a covenant binding two partners of whom one at least is of French nationality, the formalities provided for in paragraphs 2 and 4 and those required in case of an amendment of the covenant shall be the responsibility of French diplomatic and consular agents.

Art. 515-4

Partners bound by a civil covenant of solidarity shall provide mutual material and moral aid to each other. The terms of that aid shall be fixed by the covenant.

Partners shall be jointly and severally liable with regard to third parties for debts incurred by one of them for the needs of everyday life and for expenses relating to the common lodging.

Art. 515-5

Partners to a civil covenant of solidarity shall lay down, in the agreement referred to in Article 515-3, paragraph 2, whether they wish to submit to the system of undivided ownership the furniture they would acquire for value after the conclusion of the covenant. Failing which, that furniture shall be deemed undivided in halves. It shall be likewise where the date of acquisition of that property may not be established.

The other property of which partners become owners for value after the conclusion of the covenant shall be deemed undivided in halves where the instrument of acquisition or of subscription does not otherwise provide.

Art. 515-6

The provisions of Article 832 shall apply between partners to a civil covenant of solidarity in case of dissolution of it, save those relating to all or part of an agricultural holding, as well as to an undivided share or to partnership shares of that holding.

Art. 515-7

Where partners decide by mutual agreement to put an end to a civil covenant of solidarity, they shall file a joint written declaration with the court office of the tribunal d'instance under the jurisdiction of which one of them at least has his residence. The clerk shall enter that declaration into a register and shall ensure its preservation.

Where one of the partners decides to put an end to a civil covenant of solidarity, he or she shall serve notice of his or her decision on the other and shall send a copy of that notice to the court office of the tribunal d'instance which received the initial instrument.

Where one of the partners puts an end to a civil covenant of solidarity by marrying, he or she shall notify his or her decision to the other by service and shall send copies of the latter and of his or her record of birth on which mention of the marriage has been made, to the court office of the tribunal d'instance which received the initial instrument.

Where a civil covenant of solidarity comes to an end by the death of at least one of the partners, the survivor or any party concerned shall send a copy of the record of death to the court office of the tribunal d'instance which received the initial instrument.

A clerk who receives a declaration or instruments provided for in the preceding paragraphs shall enter or have entered mention of the end of the covenant into the margin of the initial instrument. He shall also have registration of that mention written into the margin of the register provided for in Article 515-3, paragraph 5.

Abroad, receiving, recording and preserving a declaration or instruments referred to in the first four paragraphs shall be the responsibility of French diplomatic or consular agents, who shall also undertake or have undertaken mentions provided for in the preceding paragraph.

A civil covenant of solidarity shall come to an end, according to the circumstances:

1° As soon as a mention is made in the margin of the initial instrument of the joint declaration provided for in the first paragraph;

2° Three months after service delivered under paragraph 2, provided that a copy of it was brought to the knowledge of the clerk of the court designated in that paragraph;

3° On the date of the marriage or of the death of one of the partners.

Partners shall undertake themselves the liquidation of the rights and obligations resulting on their behalf from the civil covenant of solidarity. Failing an agreement, the judge shall rule on the patrimonial consequences of the breach, without prejudice to damage possibly suffered.

CHAPTER II - OF CONCUBINAGE

Art. 515-8

Concubinage is an union in fact, characterized by a life in common offering a character of stability and continuity, between two persons, of different sexes or of the same sex, who live in couple.

BOOK TWO

OF PROPERTY AND OF THE VARIOUS MODIFICATIONS OF OWNERSHIP

TITLE ONE

OF THE VARIOUS KINDS OF PROPERTY

Art. 516

All property is movable or immovable.

CHAPTER I - OF IMMOVABLES

Art. 517

Property is immovable, either by its nature or by its destination or by the object to which it applies.

Art. 518

Lands and buildings are immovables by their nature.

Art. 519

Windmills or watermills, fixed on pillars and forming part of a building, are also immovables by their nature.

Art. 520

Harvests standing by roots and the fruit of trees not yet gathered are also immovables.

As soon as crops are cut and the fruit separated, even though not removed, they are movables.

Where only a part of a harvest is cut, this part alone is movable.

Art. 521

The normal cutting of underwood or of timber periodically cut becomes movable only as the cutting down of trees proceeds.

Art. 522

Animals which the owner of a tenement delivers to a farmer or share cropper for farming, whether they are appraised or not, shall be deemed immovables so long as they remain attached to the tenement under the terms of the agreement.

Animals leased to other than farmers or share croppers are movables.

Art. 523

Pipes used to bring water into a house or other immovable are immovables and form part of the tenement to which they are attached.

Art. 524

"Animals and things that the owner of a tenement placed thereon for the use and working of the tenement are immovable by destination" (Act n° 99-5 of 6 Jan. 1999).

Thus,

Animals attached to farming;

Farming implements;

Seeds given to farmers or share croppers;

Pigeons in pigeon-houses;

Warren rabbits;

Beehives;

"Fishes of waters not referred to in Article 402 [L. 231-3] of the Rural Code and of stretches of water referred to in Articles 432 and 433 [L. 231-6 and L. 231-7] of the same Code" (Act n° 84-512 of 29 June 1984); [now Articles L. 431-6 and L. 431-7 of the Code of the Environment]"

Wine pressers, boilers, stills, vats and barrels;

Implements necessary for working ironworks, paper-mills and other factories;

Straw and manure,

are immovables by destination where they have been placed by the owner for the use and working of the tenement.

All movables which the owner has attached to the tenement perpetually are also immovables by destination.

Art. 525

An owner shall be deemed to have attached movables perpetually to his tenement, where they are fastened with plaster or mortar or cement, or where they cannot be removed without being broken or damaged, or without breaking or damaging the part of the tenement to which they are affixed.

The mirrors of an apartment shall be deemed perpetually placed where the flooring to which they have been fastened is part of the panelling.

It shall be the same as to pictures and other ornaments.

As regards statues, they are immovables where they are placed in a recess designed expressly to receive them, even though they can be removed without breakage or damage.

Art. 526

The usufruct of immovable things;

Servitudes or land services;

Actions for the purpose of recovering an immovable,

are immovables by the object to which they apply.

CHAPTER II - OF MOVABLES

Art. 527

Property is movable by its nature or by prescription of law.

Art. 528

(Act n° 99-5 of 6 Jan. 1999)

Animals and things which can move from one place to another, whether they move by themselves, or whether they can move only as the result of an extraneous power, are movables by their nature .

Art. 529

Obligations and actions having as their object sums due or movable effects, shares or interests in financial, commercial or industrial concerns, even where immovables depending on these enterprises belong to the concerns, are movables by prescription of law. Those shares or interests shall be deemed movables with regard to each shareholder only, as long as the concern lasts.

Perpetual or life annuities, either from the State or private individuals, are also movables by prescription of law.

Art. 530

Any annuity established in perpetuity for the price of sale of an immovable, or as condition to a conveyance, for value or gratuitous, of an immovable tenement, is essentially redeemable.

A creditor may nevertheless regulate the terms and conditions of the redemption.

He may also stipulate that the annuity may be redeemed only after a certain time, which may never exceed thirty years: any stipulation to the contrary is void.

Art. 531

Boats, ferry-boats, ships, floating mills and baths, and generally all works which are not fastened to pillars and do not form part of a house, are movables: a seizure of some of these things may however, owing to their importance, be subject to certain special proceedings, as explained in the Code of Civil Procedure.

Art. 532

Materials coming from the demolition of a building, those gathered for erecting a new one, are movables until they are used by a worker in building operations.

Art. 533

The word movable, used alone in provisions of law or of man, without any other addition or designation, does not include ready money, precious stones, credits, books, medals, instruments of sciences, arts and professions, clothing, horses, carriages, weapons, grain, wine, hay and other commodities; neither does it include what is involved in a business.

Art. 534

The words furnishing movables include only movables intended for use and ornamentation of apartments, such as tapestries, beds, seats, mirrors, clocks, tables, china and other articles of such kind.

Pictures and statues that form part of the furniture of an apartment are also included therein, but not collections of pictures which may be in galleries or special rooms.

It shall be likewise of china: only that which is part of the decoration of an apartment is included under the denomination of furnishing movables.

Art. 535

The expression movable property, that of furniture or movable effects include generally every thing which is deemed to be a movable according to the rules above set forth.

Art. 536

A sale or gift of a house, with all that is found therein, does nor include ready money, or credits and other rights whose instruments of title may have been deposited in the house; all other movable effects are included.

CHAPTER III - OF PROPERTY IN ITS RELATIONS WITH THOSE WHO OWN IT

Art. 537

Private individuals have the free disposal of property which belongs to them, subject to the modifications established by legislation.

Property which does not belong to private individuals is administered and may be transferred only in the forms and according to the rules which are peculiar to it.

Art. 538

Ways, roads and streets of which the State is in charge, navigable or floatable rivers and streams, beaches, foreshore, ports, harbours, anchorages and generally all parts of French territory which are not capable of private ownership are deemed to be dependencies of the Public Domain.

Art. 539

All property without a claimant and a master, and that of private persons who die without heirs or whose successions are abandoned, belong to the Public Domain.

Art. 540

The gates, walls, ditches and battlements of fortified places and fortresses, are also part of the Public Domain.

Art. 541

It shall be likewise with lands, fortifications and battlements of places which are no longer fortified places: they belong to the State, unless they have been lawfully transferred, or ownership has been acquired by prescription against it.

Art. 542

Common property is that to whose ownership or revenue the inhabitants or one or several communes have a vested right.

Art. 543

One may have a right of ownership, or a mere right of enjoyment, or only land services to be claimed on property.

TITLE II

OF OWNERSHIP

Art. 544

Ownership is the right to enjoy and dispose of things in the most absolute manner, provided they are not used in a way prohibited by statutes or regulations.

Art. 545

No one may be compelled to yield his ownership, unless for public purposes and for a fair and previous indemnity.

Art. 546

Ownership of a thing, either movable or immovable, gives a right to everything it produces and to what is accessorily united to it, either naturally or artificially.

That right is called right of accession.

CHAPTER I - OF THE RIGHT OF ACCESSION TO WHAT IS PRODUCED BY A THING

Art. 547

Natural or cultural fruit of the land;

Revenues;

Increase in stock,

belong to the owner by right of accession.

Art. 548

(Act n° 60-464 of 17 May 1960)

Fruit produced by a thing belong to the owner only on condition that he repays the costs of ploughing, works and seeds incurred by third parties and whose value must be assessed at the date of repayment.

Art. 549

(Act n° 60-464 of 17 May 1960)

A mere possessor makes fruits his own only where he possesses in good faith. If not, he is bound to restore the products with the thing to the owner who claims it; where the said products are not found in kind, their value must be appraised at the date of repayment.

Art. 550

A possessor is in good faith where he possesses as owner, under an instrument of transfer of whose defects he does not know.

He ceases to be in good faith from the time those defects are known to him.

CHAPTER II - OF THE RIGHT OF ACCESSION TO WHAT UNITES OR INCORPORATES ITSELF WITH A THING

Art. 551

Everything which unites and incorporates itself with a thing belongs to the owner, according to the rules hereafter laid down.

Section I - Of the Right of Accession Relating to Immovable Things

Art. 552

Ownership of the ground involves ownership of what is above and below it.

An owner may make above all the plantings and constructions which he deems proper, unless otherwise provided for in the Title Of Servitudes or Land Services.

He may make below all constructions and excavations which he deems proper and draw from these excavations all the products which they can give, subject to the limitations resulting from statutes and regulations relating to mines and from police statutes and regulations.

Art. 553

All constructions, plantings and works on or inside a piece of land are presumed made by the owner, at his expenses and belonging to him, unless the contrary is proved; without prejudice to the ownership, either of an underground gallery under a building of another, or of any other part of the building, which a third party may have acquired or may acquire by prescription

Art. 554

(Act n° 60-464 of 17 May 1960)

An owner of the ground who made constructions, plantings and works with materials which did not belong to him, shall pay the value of them, appraised at the date of payment; he may also be ordered to pay damages, if there is occasion: but the owner of the materials may not remove them.

Art. 555

(Act n° 60-464 of 17 May 1960)

Where plantings, constructions or works were made by a third party and with materials belonging to the latter, the owner of the tenement has the right, subject to the provisions of paragraph 4, either to keep the ownership of them, or to compel the third party to remove them.

Where the owner of the tenement requires to have the constructions, plantings or works suppressed, it shall be done at the expense of the third party, and without any compensation for him; the third party may furthermore be ordered to pay damages for loss which the owner of the tenement may have suffered.

Where the owner of the tenement prefers to keep ownership of the constructions, plantings or works, he must, at his choice, repay the third party either a sum equal to that by which the tenement has increased in value, or the cost of the materials and the price of the labour appraised at the date of repayment, account being taken of the condition in which the said plantings, constructions or works are .

Where the plantings, constructions or works were made by an evinced third party who would not have been liable to restoring the fruits owing to his good faith, the owner may not insist on the suppression of the said works, constructions and plantations, but he has the choice to repay the third party either of the sums referred to in the preceding paragraph.

Art. 556

Deposits and accretions which gather successively and imperceptibly in tenements on the bank of a river or stream are called alluvion.

Alluvion benefits to the riparian owner, whether it be a question of a river or of a stream navigable, floatable or not; on condition, in the first case, that he leaves a footpath or towing-path, in accordance with regulations.

Art. 557

The same rule shall apply to sandbanks formed by running water which withdraws insensibly from one of its banks and proceeds onto the other: the owner of the uncovered bank profits from the alluvion, without the riparian owner of the opposite side being allowed to claim the land which he has lost.

That right does not arise with regard to foreshore.

Art. 558

Alluvion does not arise with regard to lakes and ponds, whose owner always keeps the land covered by the water when it reaches the level of the outlet of the pond, even where the volume of water decreases.

Reciprocally, the owner of a pond does not acquire any right to the riparian lands which its water happens to cover during extraordinary floods.

Art. 559

Where a river or stream, navigable or not, removes by a sudden drift a considerable and recognizable part of a riparian field and carries it towards a lower field or to the opposite bank, the owner of the part removed may claim his property; but he is compelled to file his claim within one year: after that period, it will no longer be admissible, unless the owner of the field to which the part removed has been joined has not yet taken possession of it.

Art. 560

Islands, islets, deposits which gather in the beds of rivers or of navigable or floatable streams belong to the State, unless there is an instrument of title or prescription to the contrary.

Art. 561

Islands and deposits which gather in streams not navigable nor floatable belong to the riparian owners on the side where the island gathered: where the island has not gathered on one side, it belongs to riparian owners of both sides, beginning from a line supposedly drawn in the middle of the river.

Art. 562

Where a stream or river, in forming a new arm, cuts off and surrounds a field of a riparian owner and makes an island of it, that owner keeps the ownership of his field, although the island gathered in a river or a stream navigable or floatable.

Art. 563

(Act of 8 April 1898)

Where a river or a stream navigable or floatable forms a new course by abandoning its former bed, the riparian owners may acquire ownership of that former bed, each one in his own right until a line supposedly drawn in the middle of the stream. The price of the former bed must be fixed by experts appointed by the president of the court of the location of the land, on request of the préfet of the département.

Where the riparian owners fail to declare, within three months of the notice served upon them by the préfet, their intention to purchase at the prices fixed by the experts, the conveyance of the ancient bed must be made under the rules which govern alienation of the domain of the State.

The proceeds of the sale shall be distributed as a compensation to the owners of the tenements filled by the new course in proportion to the value of the ground taken from each of them.

Art. 564

Pigeons, rabbits, fishes which go to another pigeon-house, warren or "stretch of water referred to in Articles 432 and 433 [L. 231-6 and L. 231-7] of the Rural Code" (Act n° 84-512 of 29 June 1984), belong to the owner of these things, provided that they were not attracted by fraud or guile.

Section II - Of the Right of Accession Relating to Movable Things

Art. 565

Where the right of accession applies to two movable things belonging to two different masters, it depends entirely on the principles of natural equity.

The following rules will serve as examples to the judge to make up his mind, in unforeseen situations, according to the circumstances of the case.

Art. 566

(Act n° 60-464 of 17 May 1960)

Where two things belonging to different masters, which have been so joined as to form one whole, are nevertheless separable, so that one may subsist without the other, the whole belongs to the master of the thing which forms the main part, subject to the obligation of paying to the other the value, appraised at the date of payment, of the thing which has been jopined.

Art. 567

The part to which the other has been joined only for the use, ornamentation or completion of the first is deemed the main part.

Art. 568

Where, however, the thing joined is of much more value than the main thing and where it was used without the knowledge of the owner, the latter may request that the thing joined be separated in order to be returned to him, even where there may result some deterioration of the thing to which it has been joined.

Art. 569

Where of two things joined to form one whole, one cannot be considered as the accessory of the other, that one is deemed the main which has the greater value, or the greater volume where the values are approximately equal.

Art. 570

(Act n° 60-464 of 17 May 1960)

Where a craftsman or any person whatever has used material which did not belong to him to make a thing of a new kind, whether the material can resume its original form or not, he who was the owner of it has the right to claim the thing made out of it by repaying the price of the labour appraised at the date of repayment.

Art. 571

(Act n° 60-464 of 17 May 1960)

Where however the labour was so important that it greatly exceeds the value of the material used, the service will then be deemed the main part and the workman has the right to keep the thing wrought, by repaying the owner the value of the material, appraised at the date of repayment.

Art. 572

(Act n° 60-464 of 17 May 1960)

Where a person has partly used material which belonged to him and partly material which did not belong to him to make a thing of a new kind, without either of the two materials being entirely destroyed, but in such a way that they cannot be separated without inconvenience, the thing is common to the two owners, as to one, on account of the material which belonged to him, and as to the other, on account both of the material which belonged to him and of the price of his labour. The price of the labour must be appraised at the date of the auction sale provided for in Article 575.

Art. 573

Where a thing has been formed by a mingling of several materials belonging to different owners, of which none however can be considered as the main material, if the materials can be separated, he without whose knowledge the materials have been mingled may request that they be separated.

Where the materials can no longer be separated without inconvenience, they acquire ownership of them in common, in proportion to the quantity, the quality and the value of the materials belonging to each of them.

Art. 574

(Act n° 60-464 of 17 May 1960)

Where the material belonging to one of the owners was far superior to the other in quantity and price, then the owner of the material superior in value may request the thing resulting from the mingling, by repaying the other the value of his material, appraised at the date of repayment.

Art. 575

Where a thing remains in common between the owners of the materials from which it has been made, it must be sold by auction for their common benefit.

Art. 576

(Act n° 60-464 of 17 May 1960)

In all cases where the owner whose material was used without his knowledge to make a thing of a different kind may claim ownership of that thing, he has the choice of requesting restitution of his material in the same kind, quantity, weight, measure and good quality, or its value appraised at the date of restitution.

Art. 577

Those who have made use of materials belonging to others, and without their knowledge, may also be ordered to pay damages, if there is occasion, without prejudice to criminal prosecution, if need be.

TITLE III

OF USUFRUCT, OF USE AND OF HABITATION

CHAPTER I - OF USUFRUCT

Art. 578

Usufruct is the right to enjoy things of which another has ownership in the same manner as the owner himself, but on condition that their substance be preserved.

Art. 579

Usufruct is established by law or by a person's wish.

Art. 580

Usufruct may be established outright, or at a certain date, or conditionally.

Art. 581

It may be established on any kind of movable and immovable property.

Section I - Of the Rights of a Usufructuary

Art. 582

A usufructuary has the right to enjoy all kinds of fruits, either natural or cultural, or revenues, which the thing of which he has the usufruct can produce.

Art. 583

Natural fruits are those which are the spontaneous product of the earth. The produce and increase of animals are also natural fruits.

Cultural fruits of a tenement are those which are obtained by cultivation.

Art. 584

Revenues are rents of houses, interests on sums due, arrears of annuities.

Prices of farming leases are also included in the class of revenues.

Art. 585

Natural and cultural fruits, hanging from branches or roots when a usufruct begins, belong to the usufructuary.

Those which are in the same condition when the usufruct comes to an end, belong to the owner, without compensation on either side for ploughing and seeds, but also without prejudice to the portion of the fruits which may be acquired by a tenant paying rent in kind who may be there at the beginning or at the termination of the usufruct.

Art. 586

Revenues are deemed to be acquired day by day, and belong to the usufructuary in proportion to the duration of his usufruct. This rule shall apply to proceeds of farming leases, as well as to rents of houses and other revenues.

Art. 587

(Act n° 60-464 of 17 May 1960)

Where a usufruct includes things which cannot be used without being consumed, such as money, grain, liquors, a usufructuary has the right to use them, but with the responsibility of returning, at the end of the usufruct, either things of the same quantity and quality or their value appraised at the time of restitution.

Art. 588

A usufruct of a life annuity also gives the usufructuary, during the duration of his usufruct, the right to collect arrearages of it, without being liable to any restitution.

Art. 589

Where a usufruct includes things which, without being consumed at once, deteriorate gradually, such as clothes or furnishing movables, the usufructuary has the right to make use of them for the use to which they are intended and is only bound to return them at the end of the usufruct in the condition in which they are, not deteriorated through his intentional wrong or fault.

Art. 590

Where a usufruct includes underwood, a usufructuary is bound to respect the order and quota of cuttings, in accordance with the parcelling or the uniform usage of the owners; without however compensation in favour of the usufructuary or of his heirs, for ordinary cuttings, either of coppice, or of staddles, or of forest trees that were not done during his enjoyment.

Trees which can be removed from a tree nursery without damaging it, form part of a usufruct only on condition for the usufructuary of complying with the usages of the place in replacing them.

Art. 591

A usufructuary also benefits, always by observing the periods and usages of the former owners, by the parts of woods of timber trees in which periodical cuttings are made, whether those cuttings are made periodically over a certain extent of land, or whether they are made of a certain quantity of trees taken indiscriminately over the whole surface of the property.

Art. 592

In all other cases, a usufructuary may not interfere with woods of timber trees: he may only use the trees which have been uprooted or broken by accident to make the repairs which he is bound to make; he may even for that purpose have trees cut down, if necessary, provided the necessity of so doing is ascertained with the owner.

Art. 593

He may take vine props in the woods; he may also take annual or periodical products from the trees; all of which being done according to the usage of the country or the custom of the owners.

Art. 594

Fruit trees which die, even those which are uprooted or broken by accident, belong to the usufructuary, subject to the condition of replacing them by others.

Art. 595

(Act n° 65-570 of 13 July 1965)

A usufructuary may enjoy by himself, give on lease to another, even sell or transfer his right gratuitously.

Leases that a usufructuary made alone for a period exceeding nine years are, in case of termination of the usufruct, binding with regard to the bare-owner only for the time remaining to run, either of the first period of nine years where the parties are still in it, or of the second period, and so on in order that the lessee has only the right to conclude the enjoyment of the period of nine years in which he is.

Leases of nine years or under which an usufructuary alone makes or renews more than three years before termination of a current lease where it relates to rural property, or more than two years before the same time where it relates to houses, are without effect, unless their performance began before termination of the usufruct.

A usufructuary may not, without the assistance of the bare-owner, give on lease a rural tenement or an immovable intended for commercial, industrial or craft use. Failing assent of the bare-owner, a usufructuary may be authorized by a court to do that transaction alone.

Art. 596

A usufructuary enjoys the increase resulting from alluvion to the thing of which he has the usufruct.

Art. 597

He enjoys the rights of servitude, of way and generally all rights which an owner may enjoy, and he enjoys them in the same way as the owner himself.

Art. 598

He also enjoys, in the same way as the owner, mines and quarries which are being worked when the usufruct begins; where, however, a working which may not be carried on without a concession is concerned, a usufructuary may enjoy it only after gaining permission from the President of the Republic.

He has no right to mines and quarries not yet opened, or to peat bogs whose working has not yet begun, or to a treasure-trove which may be discovered during the duration of the usufruct.

Art. 599

An owner may not, by his acts or in any manner whatsoever, injure the rights of a usufructuary.

On his part, a usufructuary may not, on termination of the usufruct, claim any compensation for the improvements which he asserts to have made, even though the value of the thing has been increased thereby.

He or his heirs may however remove mirrors, pictures and other ornaments which he may have set up, but provided he restores the premises to their former condition.

Section II - Of the Obligations of a Usufructuary

Art. 600

A usufructuary takes things in the condition in which they are; but he may enter into enjoyment only after having an inventory of the movables and a statement as to the immovables subject to the usufruct drawn up, the owner being present or he having been duly summoned.

Art. 601

He shall give security to enjoy as a prudent administrator, unless he is dispensed with by the instrument creating the usufruct; however, the father and mother who have the legal usufruct of their children's property, a seller or donor who reserved the usufruct, are not obliged to give security.

Art. 602

Where a usufructuary does not find a security, the immovables shall be given on lease or sequestered;

Sums included in the usufruct shall be invested;

Commodities shall be sold and the proceeds arising out of it shall be likewise invested;

The interest on those sums and the proceeds of leases shall belong in that case to the usufructuary.

Art. 603

Failing a security on the part of a usufructuary, an owner may demand that movables which fall into decay through use be sold, and the proceeds invested like that of commodities; the usufructuary shall then enjoy the interest during his usufruct: however, a usufructuary may request, and the judges may order, according to the circumstances, that a part of the movables necessary for his use be left to him, on his own mere guarantee given on oath, and subject to the condition of presenting them again on termination of the usufruct.

Art. 604

Delay in giving security does not deprive a usufructuary of the fruits to which he may be entitled: they are owed to him from the time when the usufruct began.

Art. 605

A usufructuary is only bound to repairs of maintenance.

Major repairs remain the responsibility of the owner, unless they were occasioned by the lack of repairs of maintenance since the beginning of the usufruct; in which case the usufructuary is also liable for them.

Art. 606

Major repairs are those to main walls and vaults, the restoring of beams and of entire coverings;

That of dams, breast walls and enclosing walls also in entirety.

All other repairs are of maintenance.

Art. 607

Neither an owner nor a usufructuary are bound to rebuild what has fallen from decay or has been destroyed by a fortuitous event.

Art. 608

A usufructuary is liable during his enjoyment for all the annual charges upon the property, such as taxes and others which, according to usage, are deemed to be charges on the fruits.

Art. 609

As to charges that may be imposed upon the ownership for the duration of the usufruct, an owner and a usufructuary contribute to them as follows:

The owner is bound to pay them and the usufructuary must account to him for interest;

Where they are advanced by the usufructuary, he may claim the capital at the end of the usufruct.

Art. 610

A legacy, made by a testator, of a life annuity or of periodical payments, must be paid wholly by the universal legatee of the usufruct, and by a legatee by universal title of the usufruct in proportion to his enjoyment, without any claiming back on their part.

Art. 611

A specific usufructuary is not liable for debts for which the tenement is mortgaged: where he is compelled to pay them, he has a remedy against the owner, subject to what is provided for in Article 1020 in the Title Of Gifts Inter Vivos and of Wills.

Art. 612

A usufructuary, either universal, or by universal title, shall contribute with the owner to the payment of debts as follows:

The value of the tenement subject to usufruct shall be appraised; the contribution to the debts shall be then fixed, in accordance with that value.

Where a usufructuary wishes to advance the sum for which the tenement is liable, the capital shall be restored to him at the end of the usufruct, without any interest.

Where a usufructuary does not wish to make that advance, the owner has the choice either to pay that sum, in which case the usufructuary shall account to him for interest during the duration of the usufruct, or to have a portion of the property subject to the usufruct sold to the extent of the amount due.

Art. 613

A usufructuary is obliged to pay only the costs of the suits relating to enjoyment and of the other orders to which those suits may give rise.

Art. 614

Where during the duration of an usufruct a third party commits any encroachment upon the tenement, or interferes in any other way with the rights of the owner, the usufructuary is bound to notify the latter thereof; failing which, he is liable for all loss which may result from it to the owner, as he would be for dilapidations committed by himself.

Art. 615

Where an usufruct is established only over an animal which happens to die without the fault of the usufructuary, the latter is not bound to return another one, or to pay an appraisal of it.

Art. 616

(Act n° 60-464 of 17 May 1960)

Where a herd upon which a usufruct was established perishes entirely by accident or disease and without the fault of the usufructuary, the latter is bound to account to the owner only for the skins, or of their value appraised at the date of restitution.

Where the herd does not perish entirely, the usufructuary is bound to replace the heads of the animals that have perished, to the extent of the increase in stock.

Section III - Of the Manner in which a Usufruct comes to an End

Art. 617

A usufruct is extinguished:

By the natural [repealed by implication] death of the usufructuary;

By the expiry of the time for which it was granted;

By the consolidation or vesting in the same person of the two capacities of usufructuary and of owner;

By non-user of the right during thirty years;

By the total loss of the thing upon which the usufruct was established.

Art. 618

Usufruct may also cease through abuse which a usufructuary makes of his enjoyment, either by committing dilapidations upon the tenement, or by allowing it to decay for want of maintenance.

Creditors of a usufructuary may intervene in controversies, for the preservation of their rights; they may offer to repair the dilapidations committed and to give guarantees for the future.

Judges may, according to the seriousness of the circumstances, order either the absolute extinguishment of the usufruct, or the re-entry of the owner into the enjoyment of the thing subject thereto, provided that he pays annually to the usufructuary, or to his assigns, a fixed sum, up to the time when the usufruct should have ceased.

Art. 619

A usufruct which is not granted to private individuals may last only thirty years.

Art. 620

A usufruct granted until a third party reaches a fixed age lasts until that time, even though the third party dies before the fixed age.

Art. 621

The sale of a thing subject to usufruct involves no change in the right of the usufructuary; he continues to enjoy his usufruct unless he has formally waived it.

Art. 622

Creditors of a usufructuary may have a waiver annulled, where it was prejudicial to them.

Art. 623

Where a part only of a thing subject to usufruct is destroyed, usufruct is preserved on what remains.

Art. 624

Where a usufruct is established only on a building, and that building is destroyed by fire or other accident, or collapses from decay, the usufructuary may not have the right to enjoy the ground or the materials.

Where the usufruct was established on an area of which the building was a part, the usufructuary enjoys the ground and the materials.

CHAPTER II - OF USE AND OF HABITATION

Art. 625

Rights of use and habitation are established and lost in the same manner as usufruct.

Art. 626

They may not be enjoyed unless security has been previously given, and statements and inventories made, as in the case of usufruct.

Art. 627

A user and a person having a right of habitation shall enjoy like prudent administrators.

Art. 628

Rights of use and of habitation are regulated by the instruments which have established them and are more or less extensive, depending upon their provisions.

Art. 629

Where an instrument does not make clear the extent of these rights, they shall be regulated as follows.

Art. 630

A person who has the use of the fruits of a tenement may only demand what is necessary for his needs and those of his family.

He may demand them even for the needs of children arrived since the granting of the use.

Art. 631

A user may neither transfer nor lease his right to another person.

Art. 632

He who has a right of habitation in a house, may live there with his family, even though he was not married at the time when that right was granted to him.

Art. 633

A right of habitation is restricted to what is necessary for the habitation of the person to whom that right is granted, and of his family.

Art. 634

A right of habitation may not be transferred or leased.

Art. 635

Where an user takes all the fruits of a tenement, or occupies the whole of a house, he is subjected to the expenses of cultivation, repairs of maintenance and payment of taxes, like a usufructuary.

Where he takes only a part of the fruits or occupies only a part of a house, he shall contribute in proportion to what he enjoys.

Art. 636

Use of woods and forests is regulated by a specific legislation.

TITLE IV

OF SERVITUDES OR LAND SERVICES

Art. 637

A servitude is a charge imposed on an immovable for the use and utility of another immovable belonging to another owner.

Art. 638

A servitude may not establish any pre-eminence of an immovable over the other.

Art. 639

It results either from the natural location of the premises, or from obligations imposed by statute, or from agreements between owners.

CHAPTER I - OF THE SERVITUDES ORIGINATING FROM THE SITUATION OF THE PREMISES

Art. 640

Lower tenements are subjected to those which are higher, to receive waters which flow naturally from them without the hand of man having contributed thereto.

A lower owner may not raise dams which prevent that flow.

An upper owner may not do anything that worsens the servitude of the lower tenement.

Art. 641

(Act of 8 April 1898)

An owner has the right to use and dispose of rainwater which falls on his tenement.

Where the use of those waters or the course given to them worsens the natural servitude of flow established by Article 640, a compensation is due to the owner of the lower tenement.

The same provision shall apply to spring waters originating on a tenement.

Where, by borings or subterranean works, an owner causes waters to rise from his tenement, the owners of lower tenements must receive them; but they are entitled to compensation in case of loss resulting from their flow.

Houses, courts, gardens, parks and enclosures adjoining dwellings may not be subjected to any worsening of the servitude of flow in the cases provided for in the preceding paragraphs.

Controversies which the establishment and exercise of the servitudes provided for by these paragraphs may give rise to, and the settlement, if any, of the compensations due to the owners of lower tenements, must be brought, subject to review, before the judge of the tribunal d'instance of the canton who, in his judgment must reconcile the interests of agriculture and industry with the respect due to ownership.

If there is occasion for an appraisement, one expert only may be appointed

Art. 642

(Act of 8 April 1898)

A person who has a spring on his tenement may always use the water on his wishes, within the limits and for the needs of his property.

An owner of a spring may no longer use it to the detriment of the owners of the lower tenements who, for more than thirty years, have made and completed, on the tenement where the water springs, apparent and permanent works intended to use the waters and facilitating their passage within their property.

Nor may he use them so as to deprive the inhabitants of a commune, village or hamlet, of the water which is necessary to them; but where the inhabitants have not acquired or prescribed the use, the owner may claim a compensation which shall be fixed by experts.

Art. 643

(Act of 8 April 1898)

Where, as soon as they leave the tenement where they spout out, spring waters form a watercourse presenting the nature of public and running waters, the owner may not divert them from their natural course, to the detriment of lower users.

Art. 644

A person whose property borders running water other than that which is declared a dependency of the Public Domain by Article 538 in the Title Of Different Kinds of Property, may use it as it flows for irrigating his property.

A person through whose property that water flows may even use it over the interval it runs through it, provided he returns it to its ordinary course when it leaves his tenements.

Art. 645

Where a controversy arises between owners to whom those waters may be useful, the courts, in their decisions, must reconcile the interests of agriculture with the respect due to ownership; and, in all cases, the special and local regulations on the course and use of waters must be complied with.

Art. 646

Any owner may compel his neighbour to a setting of boundaries of their contiguous tenements. Setting boundaries shall be done at common expense.

Art. 647

An owner may enclose his property, subject to the exception laid down in Article 682.

Art. 648

An owner who wishes to be enclosed loses his right to commonage and free pasture, in proportion to the land that he so withdraws.

CHAPTER II - OF THE SERVITUDES ESTABLISHED BY STATUTE

Art. 649

Servitudes established by statute are for the purpose of public or communal utility, or of the utility of private individuals.

Art. 650

Those established for public or communal utility have as their subjects towing-paths along navigable or floatable streams, the making or repairing of roads and of other public or municipal works.

All that relates to that kind of servitudes is prescribed by statutes or specific regulations.

Art. 651

The law subjects owners to various obligations towards each other, independent of any agreement.

Art. 652

Part of those obligations are regulated by statutes on rural police;

The others relate to party walls and common ditches, to cases in which an outer wall is necessary, to views over the property of a neighbour, to eaves and to right of way.

Section I - Of Party Walls and Common Ditches

Art. 653

In cities and in the country, any wall serving as separation between buildings up to the point of disjunction, or between courtyards and gardens, and even between enclosures in fields, is deemed to be a party wall, unless there is an instrument of title or an indication to the contrary.

Art. 654

There is an indication of a non-party wall where the top of a wall is straight and perpendicular from its facing on one side and shows an inclined plane on the other;

Even where there is on one side only either a coping or stone fillets and corbels which were placed there in building the wall.

In such cases, a wall is deemed to belong exclusively to the owner on whose side the eaves or stone corbels and fillets are.

Art. 655

Repairing and reconstruction of a party wall must be borne by all those who have a right to it, and in proportion to the right of each.

Art. 656

However, any co-owner of a party wall may excuse himself from contributing to repairing and reconstructing by waiving the right in common, provided the party wall does not support a building which belongs to him.

Art. 657

A co-owner may build against a party wall, and place there beams or joists through the whole thickness of the wall, more or less fifty-four millimetres, without prejudice to a neighbour's right to have the beam shortened with a chisel down to half of the wall, where he himself wishes to lay beams in the same place, or to back a chimney against it.

Art. 658

(Act n° 60-464 of 17 May 1960)

A co-owner may have a party wall raised; but he must pay alone the expense of the raising and of the repairs of maintenance above the height of the common enclosure; he must also pay alone the costs of maintenance of the common part of the wall due to the raising and repay to the neighbouring owner all the expenses made necessary for the latter by the raising.

Art. 659

Where a party wall is not in a condition to support a raising, the person wishing to raise it must have it entirely rebuilt at his own expense, and the thickness in excess must be taken on his side.

Art. 660

(Act n° 60-464 of 17 May 1960)

A neighbour who did not contribute to a raising may acquire rights in common on it by paying one-half of the expense it has cost and the value of one-half of the ground supplied for the additional thickness, if there is any. The expense that the raising has cost must be appraised at the date of acquisition, account being taken of the condition in which the raised part of the wall is.

Art. 661

(Act n° 60-464 of 17 May 1960)

An owner adjoining a wall may make it a party wall in whole or in part by repaying to the master of the wall half the expense which it has cost, or half the expense which the part of the wall which he wishes to make a party wall has cost and half the value of the ground on which the wall was built. The expense which the wall has cost must be appraised at the date of acquisition of rights in common on it, account being taken of the condition in which it is.

Art. 662

A neighbour may not make a recess in a party wall or apply or build up a work on it without the consent of the other, or, on his refusal, without having had experts determine the necessary steps in order that the new work be not detrimental to the other's rights.

Art. 663

In cities and suburbs, everyone may compel his neighbour to contribute to the constructions and repairs of an enclosure separating their houses, court-yards and gardens situated in those cities and suburbs: the height of the enclosure shall be fixed according to specific regulations or uniform and recognized usages and, failing usages and regulations, a dividing wall between neighbours, which will be constructed or restored in the future, shall be at least thirty-two decimetres high, including the coping, in cities of fifty thousand souls and more, and twenty-six decimetres in the others.

Art. 664 [repealed]

Art. 665

Where a party wall or a house is rebuilt, active and passive servitudes continue with regard to the new wall or the new house, without, however, their being allowed to become more burdensome, and provided rebuilding is made before prescription is acquired.

Art. 666

(Act of 20 Aug. 1881)

Every enclosure separating tenements is deemed to be held in common, unless there is only one property actually enclosed, or there is an instrument of title, prescription or indication to the contrary.

As regards ditches, there is an indication that they are not held in common where the embankment or spoil of earth is found on only one side of the ditch.

A ditch is deemed to belong exclusively to the one on whose side the spoil is situated.

Art. 667

(Act of 20 Aug. 1881)

A common enclosure must be maintained at common expense; but a neighbour may elude that obligation by waiving ownership in common.

That power ceases where the ditch serves usually for the flowing of waters.

Art. 668

(Act of 20 Aug. 1881)

A neighbour whose property adjoins a ditch or a hedge not held in common may not compel the owner of that ditch or hedge to convey rights in common to him.

A co-owner of a common hedge may destroy it up to the limit of his property, provided he builds a wall upon that limit.

The same rule shall apply to the co-owner of a common ditch which is used only as an enclosure.

Art. 669

(Act of 20 Aug. 1881)

So long as a hedge is held in common, its products belong to the owners in halves.

Art. 670

(Act of 20 Aug. 1881)

Trees situated in a common hedge are held in common as the hedge is. Trees planted on the dividing line of two tenements are also deemed to be held in common. Where they die or are cut or uprooted, those trees are divided in halves. Fruits are gathered at joint expense and divided

also in halves, either when they fall naturally, or when the fall was caused, or when they were picked.

Each owner has the right to require that the trees held in common be uprooted.

Art. 671

(Act of 20 Aug. 1881)

It is permitted to have trees, shrubs or bushes near the limit of a neighbouring property only at the distance allowed by the specific regulations presently in force or by uniform and recognized usages, and failing regulations and usages, at the distance of two metres from the dividing line of the two tenements as regards plantations whose height exceeds two metres, and at the distance of half a metre as regards other plantation.

Trees, bushes and shrubs of all kinds may be planted in espaliers on each side of a dividing wall, without having to keep to any distance, but they may not pass the crest of the wall.

Where a wall is not a party wall, the owner alone has the right to lean espaliers against it.

Art. 672

(Act of 20 Aug. 1881)

A neighbour may require that trees, shrubs and bushes planted at a distance less than the statutory distance, be uprooted or reduced to the height fixed in the preceding Article, unless there is an instrument of title, an adjustment made by the owner, or thirty-year prescription.

Where the trees die, or where they are cut or uprooted, a neighbour may replace them only by keeping to the statutory distances.

Art. 673

(Act of 20 Aug. 1881; Act of 12 Feb. 1921)

One over whose property branches of a neighbour's trees, bushes and shrubs jut out may compel the latter to cut them. Fruits which have fallen naturally from these branches belong to him.

Where roots, brambles and brushwood jut out on his property, he has the right to cut them himself up to the limit of the dividing line.

The right to cut roots, brambles and brushwood or to have branches of trees, bushes or shrubs cut may not be lost by prescription.

Section II - Of theDistance and of Intermediate Works Required for Certain Constructions

Art. 674

He who has a well or a cesspool dug near a wall, whether it is a party wall or not,

He who wishes to build a chimney or a fire-place, a forge, an oven or a furnace,

Set a stable against it,

Or place against that wall a store of salt or a heap of corrosive materials;

Is obliged to leave the distance prescribed by regulations and specific usages relating to those things, or to do the works prescribed by the same regulations and usages in order to avoid injuring a neighbour.

Section III – Of the Views over the Property of One's Neighbour

Art. 675

One of the neighbours may not, without the consent of the other, cut in a party wall any window or opening, in any manner whatever, even in fixed fanlights.

Art. 676

The owner of a wall which is not a party wall, adjoining the property of another person, may cut openings or windows in it, in leaded iron and fixed fanlights.

Those windows must be provided with an iron lattice whose meshes shall have an aperture of one decimetre (about three inches, eight lines) at the most, and with a frame of fixed fanlights.

Art. 677

Those windows or openings may only be made at twenty six decimetres (eight feet) above the floor or ground of the room which one wishes to give light to, where it is on the ground floor, and at nineteen decimetres (six feet) above the floor of the upper stories.

Art. 678

(Act n° 67-1253 of 30 Dec. 1967)

One may not have straight views or bow windows, or balconies or similar projections over the neighbour's property, whether enclosed or not, if there is not a distance of nineteen decimetres between the wall where they are cut and the said property, unless the tenement or the part of the tenement over which the view bears is already burdened, for the benefit of the tenement which profits by it, with a servitude of way which prevents the erecting of constructions.

Art. 679

(Act n° 67-1253 of 30 Dec. 1967)

One may not, subject to the same reservation, have side or oblique views on the same property, unless there is a distance of six decimetres.

Art. 680

The distance mentioned in the two preceding Articles counts from the outer facing of the wall in which the opening is cut, and, where there are balconies or other similar projections, from their exterior line up to the dividing line of the two tenements.

Section IV - Of Eaves

Art. 681

An owner must make his roofs in such a way that rainwater falls on his land or on the public highway; he may not have it pour on his neighbour's tenement.

Section V - Of Right of Way

Art. 682

(Act n° 67-1253 of 30 Dec. 1967)

An owner whose tenements are enclaved and who has no way out to the public highway, or only one which is insufficient either for an agricultural, industrial or commercial working of his property, or for carrying out operations of building or development, is entitled to claim on his neighbours' tenements a way sufficient for the complete servicing of his own tenements, provided he pays a compensation in proportion to the damage he may cause.

Art. 683

(Act of 20 Aug. 1881)

The way must be taken regularly on the side where the route from the enclaved tenement to the public highway is shortest

It must however be fixed at the least damageable place for the person over whose tenement it is allowed.

Art. 684

(Act of 20 Aug. 1881)

Where a tenement is enclosed because of its dividing in consequence of a sale, an exchange, a partition or any other contract, a way may be requested only on the lands which were the subject of those transactions.

However, in the case where a sufficient way cannot be made over the divided tenements, Article 682 shall apply.

Art. 685

(Act of 20 Aug. 1881)

The location and manner of a servitude of way for enclavement are established by a continuous usage for thirty years.

An action for compensation in the case provided for in Article 682 is subject to be time-barred, and the way may be continued, although an action for compensation is no longer admissible.

Art. 685-1

(Act n° 71-494 of 25 June 1971)

In case of discontinuance of the enclavement and whatever be the way in which the location and manner of the servitude were determined, the owner of the servient tenement may, at any time, invoke the extinguishment of the servitude where the service of the dominant tenement is ensured under the conditions of Article 682.

Failing amicable agreement, that disappearance must be ascertained by a judicial decision.

CHAPTER III - OF THE SERVITUDES ESTABLISHED BY THE ACT OF MAN

Section I - Of the Various Kinds of Servitudes which may be Established over Property

Art. 686

Owners are permitted to establish over their property, or in favour of their property, such servitudes as they deem proper, provided however that the services established are laid neither on a person nor in favour of a person, but only on a tenement and for a tenement, and provided that those servitudes moreover are not in any way contrary to public policy.

The use and extent of the servitudes thus established are regulated by the instrument which creates them; failing an instrument, by the following rules.

Art. 687

Servitudes are established either for the use of buildings, or for that of tenements.

Those of the first kind are called urban, whether the buildings to which they are due are located in a city or in the country.

Those of the second kind are named rural.

Art. 688

Servitudes are either continuous or discontinuous.

Continuous servitudes are those whose usage is or may be unceasing without need of a present act of man: such are water-pipes, sewers, views and others of that kind.

Discontinuous servitudes are those which need a present act of man in order to be exercised: such are rights of way, drawing water, pasturing and others similar.

Art. 689

Servitudes are apparent or non-apparent.

Apparent servitudes are those which show themselves by outer works, such as a door, a window, an aqueduct.

Non-apparent servitudes are those which do not have an outer sign of their existence, such as for instance a prohibition to build on a tenement, or to build only up to a fixed height.

Section II - How Servitudes are Established

Art. 690

Continuous and apparent servitudes are acquired by an instrument of title or by possession of thirty years.

Art. 691

Continuous non-apparent servitudes and discontinuous servitudes, whether apparent or not, may be established only by an instrument of title.

Possession, even immemorial, is not sufficient to establish them, without, however, one being allowed to challenge today servitudes of that kind already acquired by possession in localities where they were allowed to be acquired in that way.

Art. 692

Adjustment made by the owner is equivalent to an instrument of title as to continuous and apparent servitudes.

Art. 693

There is an adjustment made by the owner only where it is proved that the two tenements at present divided belonged to the same owner and that it was through him that things were put in the condition which gives rise to the servitude.

Art. 694

Where an owner of two tenements between which an apparent sign of servitude exists, disposes of one property and the contract does not contain any agreement relating to the servitude, the latter continues to exist actively or passively in favour of the tenement conveyed or upon the tenement conveyed.

Art. 695

An instrument creating a servitude, with regard to those which may not be acquired by prescription, may be replaced only by an instrument recognizing the servitude, emanating from the owner of the tenement subjected to the servitude.

Art. 696

Where a person establishes a servitude, he is deemed to grant all that is necessary to use it.

For instance, a servitude to draw water from another's fountain necessarily involves a right of way.

Section III - Of the Rights of the Owner of a Tenement to which a Servitude is Due

Art. 697

A person to whom a servitude is due, has the right to make all works necessary to use and maintain it.

Art. 698

Those works shall be at his expense, and not at that of the owner of the tenement subjected to the servitude, unless the instrument creating the servitude provides for the contrary.

Art. 699

Even in the case where the owner of a tenement subjected to a servitude is compelled under the instrument to make the works necessary for the use or preservation of a servitude at his own expense, he may always exempt himself from the burden by waiving the servient tenement to the owner of the tenement to which the servitude is due.

Art. 700

Where a property for which a servitude was established happens to be divided, the servitude remains due for each portion, without however the condition of the servient tenement becoming more burdensome.

Thus, for instance, in case of a right of way, all the co-owners are obliged to use it at the same place.

Art. 701

The owner of a tenement which owes a servitude may do nothing tending to diminish its use or to make it more inconvenient.

Thus, he may not change the condition of the premises or remove the exercise of the servitude to a place different from the one where it was originally assigned.

But however, where that original assigning has become more onerous to the owner of the servient tenement, or where it prevents him from making advantageous repairs on it, he may offer to the owner of the other tenement a place as convenient for the exercise of his rights, and the latter may not refuse it.

Art. 702

On his part, he who has a right of servitude may only use it in accordance with his instrument of title, without being allowed to make, either on the tenement which owes the servitude, or on the tenement to which it is due, any change which would render the condition of the former more burdensome.

Section IV - How Servitudes are Extinguished

Art. 703

Servitudes cease when things are in such a condition that they can no longer be used.

Art. 704

They revive where things are restored in such a manner that they can be used; unless time has already elapsed, sufficient to give rise to the presumption that the servitude is extinguished, as stated in Article 707.

Art. 705

A servitude is extinguished when the tenement to which it is owed, and the one which owes it, are united in the same hands.

Art. 706

A servitude is extinguished by non-user during thirty years.

Art. 707

The thirty years begin to run, according to the different kinds of servitudes, either from the day when one ceased to enjoy them, with respect to discontinuous servitudes, or from the day when an act contrary to the servitude has been performed, with respect to continuous servitudes.

Art. 708

The manner of a servitude may be time-barred like the servitude itself and in the same way.

Art. 709

Where a property in favour of which a servitude is established belongs to several persons in undivided ownership, enjoyment by one prevents prescription against all of them.

Art. 710

Where, among co-owners, there is one against whom prescription could not run, such as a minor, he keeps the rights of all the others.

BOOK III

OF THE VARIOUS WAYS IN WHICH OWNERSHIP IS ACQUIRED

general provisions

Art. 711

Ownership of property is acquired and transmitted by succession, by gift inter vivos or will, and by the effect of obligations.

Art. 712

Ownership is also acquired by accession or incorporation, and by prescription.

Art. 713

Property which has no master belongs to the State.

Art. 714

There are things which belong to nobody and whose usage is common to all.

Public order statutes regulate the manner of enjoying them.

Art. 715

The right to hunt or fish is also regulated by specific statutes.

Art. 716

Ownership of a treasure trove belongs to him who discovers it on his own tenement; where a treasure trove is discovered on another's tenement, one half of it belongs to him who discovered it, and the other half to the owner of the tenement.

A treasure trove is any hidden or buried thing of which nobody can prove ownership and which is discovered by a mere chance.

Art. 717

Rights to flotsam, to effects cast up by the sea, of whatever nature they may be, to plants and herbages which grow on the seashore, are also regulated by specific statutes.

It shall be the same as to lost things whose master does not appear.

TITLE ONE

OF SUCCESSIONS

Art. 718 and 719 [repealed]

CHAPTER ONE - OF THE OPENING OF SUCCESSIONS, THE UNIVERSAL TITLE AND THE VESTING OF HEIRS IN POSSESSION

(Act n° 2001-1135 of 3 Dec. 2001)

Art. 720

Successions are opened by death, at the latest domicile of the deceased .

Art. 721

Successions devolve according to legislation where the deceased did not dispose of his property by gratuitous transfers .

They may devolve through gratuitous transfers insofar as the latter are consistent with inheritable reserve.

Art. 722

Agreements having the purpose of creating or disclaiming rights upon all or part of a succession not yet opened or of a property being part of it are effective only where authorized by legislation .

Art. 723

Universal successors and successors by universal title are liable for an indefinite obligation to the debts of a succession .

Art. 724

Heirs designated by legislation are vested by operation of law in possession of the property, rights and actions of the deceased ;

Universal legatees and donees are vested in possession in the conditions provided for in Title II of this Book.

Failing them, succession is acquired by the State who needs a court order to take possession .

Art. 724-1

The provisions of this Title, in particular those which relate to option, undivided ownership and partition shall apply, as may be thought proper, to universal legatees or donees, or legatees or donees by universal title, save as otherwise provided by a specific rule .

CHAPTER II - OF THE QUALIFICATIONS REQUIRED FOR INHERITING OF PROOF OF HEIRSHIP

(Act n° 2001-1135 of 3 Dec. 2001)

Section I - Of theQualifications Required for Inheriting

Art. 725

In order to inherit, one must exist at the time of the opening of the succession or, having been conceived, be born viable .

A person whose absence is presumed under Article 112 may inherit .

Art. 725-1

Where two persons, one of whom was entitled to the other's succession, die in the same event, the order of deaths shall be established by any means.

Where that order may not be determined, the succession of each of them devolves without the other being called to it.

Where, however, one of the co-deceased leaves descendants, the latter may represent their predecessor in title, when representation is allowed.

Art. 726

Are unworthy of inheriting and, as such, must be excluded from succession :

1° One who is sentenced, as perpetrator or accomplice, to a serious penalty for having intentionally given or attempted to give death to the deceased;

2° One who is sentenced, as perpetrator or accomplice, to a serious penalty for having intentionally struck blows at or committed violence or assault that provoked the deceased’s death without intention of causing it.

Art. 727

May be declared unworthy of inheriting :

1° One who is sentenced, as perpetrator or accomplice, to a correctional penalty for having intentionally given or attempted to give death to the deceased;

2° One who is sentenced, as perpetrator or accomplice, to a correctional penalty for having intentionally committed violence that provoked the deceased's death without intention of causing it;

3° One who is sentenced for false testimony borne against the deceased in criminal proceedings;

4° One who is sentenced for abstaining intentionally from preventing either a serious or an ordinary offence against the physical integrity of the deceased, wherefrom death resulted, whereas he could do so without any danger as to him or third persons ;

5° One who is sentenced for a slanderous criminal charge against the deceased where, relating to the acts denounced, a serious penalty was incurred ;

May also be declared unworthy of inheriting those who have committed acts referred to in 1° and 2° above and with regard to whom, by reason of their death, the public right of action could not be exercised or was extinguished .

Art. 727-1

A declaration of unworthiness provided for in Article 727 shall be pronounced after the opening of the succession by the tribunal de grande instance on application of another heir. An application must be brought within six months of the death where the sentence or conviction precedes the death, or within six months of that judgment where it follows the death .

In the absence of heirs, a request may be filed by the Government procurator's office.

Art. 728

Is not excluded from succession a person entitled to inherit subject to a cause of unworthiness provided for in Articles 726 and 727, where the deceased, after the facts and the knowledge he had thereof, has stated by an express declaration of intention in the form of a will, that he intends to maintain him in his rights to succession or made a gratuitous transfer, universal or by universal title, in his favour.

Art. 729

An heir who is excluded from a succession on account of unworthiness is obliged to return all incomes and revenues which he enjoyed since the opening of the succession .

Art. 729-1

Children of an unworthy person may not be excluded on account of their parent's fault, whether they come to the succession on their own behalf or through representation; but an unworthy person may not, in any case, claim over the property of that succession the enjoyment that the law grants to the fathers and mothers over the property of their children.

Section II - Of Proof of Heirship

Art. 730

Proof of heirship may be made by any means.

No changes are made in the provisions or uniform usages relating to the issuing of certificates of ownership or inheritance by judicial or administrative authorities.

Art. 730-1

Proof of heirship may result from an affidavit drawn up by a notaire on request of one or several assigns.

Failing an ante-nuptial agreement or last will and testament of the predecessor in title of the person who requires it, an affidavit may also be drawn up by the clerk in chief of the tribunal d'instance of the place of opening of the succession.

An affidavit shall refer to the record of death of the person whose succession is opened and shall mention the supporting documents which may have been filed, such as records of civil status, and, possibly, documents relating to the existence of gratuitous transfers mortis causa which may affect the devolution of the succession.

It shall contain the assertion, signed by the assign or assigns makers of the request, that they are entitled, alone or with others whom they specify, to come into all or part of the succession of the deceased.

Any person whose statements seem to be useful may be called to the affidavit.

Art. 730-2

An assertion contained in an affidavit does not involve, per se, acceptance of the succession.

Art. 730-3

Faith must be given to an affidavit so established, until evidence contrary to it.

A person who avails himself of it is presumed to have rights of succession in the percentage herein stated.

Art. 730-4

The heirs designated in an affidavit or their common agent are deemed, with regard to third persons possessing property of the succession, to have free disposal of that property and, where funds are concerned, free disposal of them in the percentage stated in the affidavit.

Art. 730-5

A person who, knowingly and in bad faith, avails himself of an inaccurate affidavit, incurs the penalties of concealment provided for in Article 792, without prejudice for damages.

CHAPTER III - OF HEIRS

(Act n° 2001-1135 of 3 Dec. 2001)

Art. 731

Succession devolves by law to the relatives and spouse entitled to inherit on the following terms.

Art. 732

A surviving spouse non-divorced, against whom there does not exist an order of judicial separation having force of res judicata is a spouse entitled to inherit.

Section I - Of the Rights of Relatives in the Absence of a Spouse Entitled to Inherit

Art. 733

Legislation does not discriminate between legitimate and illegitimate children in order to determine relatives called to inherit .

Rights resulting from adoption are regulated in the Title Of Adoption.

§ 1 - Of Orders of Heirs

Art. 734

In the absence of a spouse entitled to inherit, relatives are called to succeed as follows:

1° Children and their descendants;

2° The father and mother; brothers and sisters and the descendants of the latter;

3° Ascendants other than the father and mother;

4° Collaterals other than brothers and sisters and the descendants of the latter.

Each of these four categories constitutes an order of heirs which excludes the following.

Art. 735

Children or their descendants succeed to their father and mother or other ascendants, without distinction of sex or primogeniture, even where born of different marriages.

Art. 736

Where a deceased leaves neither descendants, nor brother or sister, or descendants of the latter, his father and mother inherit from him, each one taking one half.

Art. 737

Where the father and mother have died before the deceased and the latter leaves no descendants, the brothers and sisters of the deceased or their descendants inherit from him, excluding the other relatives, ascendants or collaterals.

Art. 738

Where the father and mother outlive the deceased and the latter has no descendants, but brothers and sisters or descendants of the latter, one-quarter of the succession devolves to each one of the father and mother, and the remaining half to the brothers and sisters or to their descendants.

Where only one of the father and mother survives, one-quarter of the succession devolves to the latter, and three-quarters to the brothers and sisters or to their descendants .

Art. 739

Failing heirs of the first two orders, succession devolves to ascendants other than the father and mother .

Art. 740

Failing heirs of the first three orders, succession devolves to collateral relatives of the deceased other than brothers and sisters and the descendants of the latter .

§ 2 - Of Degrees

Art. 741

The proximity of relationship is established by the number of generations; each generation is called a degree .

Art. 742

The sequence of degrees forms the line; the sequence of degrees between persons descending one from the other is called the direct line; the sequence of degrees between persons who do not descend one from the other, but who descend from a common ancestor, is called the collateral line.

Descending direct line is separated from ascending direct line.

Art. 743

In the direct line, as many degrees are counted as there are generations between the persons: thus, a son is, with regard to his father, in the first degree, a grandson in the second; and reciprocally the father and grandfather with regard to sons and grandsons.

In the collateral line, degrees are counted by generations from one of the relatives to and exclusive of the common ancestor, and from the latter to the other relative.

Thus, two brothers are relatives in the second degree; uncle and nephew are in the third degree; first cousins in the fourth degree; and so on.

Art. 744

In each order, the heir who is in the nearest degree excludes an heir in a later degree.

In the same degree, heirs inherit in equal shares and by heads.

The whole, subject to what will be laid down hereafter as to division by branches and representation.

Art. 745

Collateral relatives may not inherit beyond the sixth degree.

§ 3 - Of Division by Branches, Paternal and Maternal

Art. 746

Parenthood is divided into two branches, depending on whether it proceeds from the father or the mother.

Art. 747

Where succession devolves to ascendants, it is divided in halves between those of the paternal branch and those of the maternal branch.

Art. 748

In each branch, the ascendant who is in the nearest degree inherits, to the exclusion of all others.

The ascendants in the same degree inherit by heads.

Failing an ascendant in a branch, the ascendants of the other branch shall take the whole succession.

Art. 749

Where succession devolves to collaterals other than brothers and sisters and their descendants, it is divided in halves between those of the paternal branch and those of the maternal branch.

Art. 750

In each branch, the collateral who is in the nearest degree inherits, to the exclusion of all others.

The collaterals in the same degree inherit by heads.

Failing a collateral in a branch, the collaterals of the other branch shall take the whole succession.

§ 4 - Of Representation

Art. 751

Representation is a fiction of the law which causes the representative to enter into the rights of the person represented.

Art. 752

Representation takes place without limitation in the descending direct line.

It is admitted in all cases, whether the children of the deceased compete with the descendants of a predeceased child, or whether all the children of the deceased having died before him, the descendants of said children are in equal or unequal degrees between them.

Art. 752-1

Representation does not take place in favour of ascendants; in each of the two lines, the nearest always excludes the remotest.

Art. 752-2

In the collateral line, representation is admitted in favour of children and descendants of brothers or sisters of the deceased, whether they come to the succession concurrently with uncles and aunts, or whether, all the brothers and sisters of the deceased having died before him, the succession devolves on their descendants in equal or unequal degree.

Art. 753

In all cases in which representation is admitted, partition shall be made by stocks, as if the represented person came to the succession; if there is occasion, it shall be made by subdivision of stock. Within a stock or subdivision of stock, partition shall be made by heads.

Art. 754

One represents predeceased persons, one does not represent those who have renounced.

One may represent a person to whose succession one has renounced.

Art. 755

Representation is admitted in favour of the children and descendants of an unworthy heir, although the latter is alive on the opening of the succession.

Children of an unworthy heir conceived before the opening of a succession of which the unworthy heir was excluded shall return to the succession of the latter the property they have inherited in his stead, where they come in competition with other children conceived after the opening of the first succession.

Collation shall be made under the provisions of Section 2 of Chapter VI of this Title .

Section II - Of the Rights of a Spouse Entitled to Inherit

§ 1 - Of the Nature of the Rights, of their Amount and Exercise

Art. 756

A spouse entitled to inherit is called to a succession either alone, or in competition with the relatives of a deceased.

Art. 757

Where a predeceased spouse leaves children or descendants, the surviving spouse shall take, at his or her option, either the usufruct of the whole of the existing property or the ownership of the quarter where all the children are born from both spouses and the ownership of the quarter in the presence of one or several children who are not born from both spouses.

Art. 757-1

Where, in the absence of children or descendants, a deceased leaves his father and mother, the surviving spouse shall take one half of the property. The other half devolves for one quarter to the father and for one quarter to the mother .

Where the father or the mother is predeceased, the share which he would have taken devolves to the surviving spouse .

Art. 757-2

In the absence of children or descendants of the deceased or of his father and mother, the surviving spouse shall take the whole succession .

Art. 757-3

Notwithstanding Article 757-2, in case of predecease of the father and mother and in absence of descendants, the property that the deceased received from them by succession or gift and that is found in kind in the succession devolves for one half to the brothers and sisters of the deceased or to their descendants, themselves descending from the predeceased parent or parents from whom the devolution originates.

Art. 758

Where a surviving spouse takes the whole or the three quarters of the property, the ascendants of the deceased, other than the father and mother, who are in need are entitled to a maintenance obligation against the succession of the predeceased.

The period within which it may be claimed is of one year after the death or the moment from which the heirs cease to perform the payments they made before to the ascendants. In case of undivided ownership the period shall be extended until the completion of the partition.

Periodical payments shall be obtained from the succession. They shall be borne by all the heirs and, in case of insufficiency, by all the specific legatees, in proportion to what they received.

If, however, the deceased expressly declared that such legacy should be paid in preference to the other, Article 927 shall apply.

Art. 758-1

Where a surviving spouse has an option between ownership or usufruct, his or her rights may not be assigned so long as he or she did not exercise the option.

Art. 758-2

The option of a spouse between usufruct and ownership may be proved by any means.

Art. 758-3

Any heir may request in writing a spouse to exercise his or her option. Where he or she fails to come to a decision in writing within three months, the spouse shall be deemed to have chosen the usufruct .

Art. 758-4

Where he or she dies without having come to a decision, the spouse shall be deemed to have chosen the usufruct .

Art. 758-5

The calculation of the right in full ownership of a spouse provided for in Articles 757 and 757-1 must be effected on an aggregate formed of all the property existing at the death of his or her spouse to which shall be united fictitiously that which he or she has disposed with, by an act inter vivos or testamentary, in favour of persons entitled to inherit, by way of advancement.

The spouse may exercise his or her right only on property which the predeceased has not disposed with by act inter vivos or testamentary, and without prejudicing reserved rights or rights to collation.

§ 2 - Of the Conversion of a Usufruct

Art. 759

Any usufruct belonging to a spouse upon the property of the predeceased, whether it results from legislation, from a will or from a gift of future property, gives rise to a power of

conversion into a life annuity, on request of one of the heirs bare-owners or of the spouse himself or herself entitled to inherit.

Art. 759-1

A power of conversion may not be renounced . Coheirs may not be deprived of it by the intention of the predeceased.

Art. 760

Failing an agreement between the parties, an application for conversion shall be referred to the judge. It may be instituted until final partition.

Where he entertains the application for conversion, the judge shall determine the amount of the annuity, the guarantees which the debtor heirs shall give, as well as the appropriate kind of index-linking to maintain the initial equivalence of the annuity to the usufruct.

The judge, however, may not order against the intention of the spouse the conversion of the usufruct bearing on the lodging which he or she occupies as his or her main residence, as well as on the furniture with which it is fitted.

Art. 761

Through an agreement between the heirs and the spouse, it may be proceeded to a conversion of the usufruct of the spouse into a capital.

Art. 762

The conversion of an usufruct is part of the performing of a partition. It does not produce a retroactive effect, save stipulations of the parties to the contrary.

§ 3 - Of the Temporary Right to Lodging and of the Right for Life to Lodging

Art. 763

Where, at the time of the death, a spouse entitled to inherit actually occupies, as his or her main habitation, a lodging belonging to the spouses or fully depending upon the succession, he or she has by operation of law, during one year, the gratuitous enjoyment of that lodging, as well as of the furniture, included in the succession, with which it is fitted.

Where his or her habitation was secured through a lease , the rents thereof shall be repaid to him or her during the year, as the payments proceed.

The rights provided for in this Article shall be deemed direct effects of the marriage and not rights of inheritance;

This Article is mandatory.

Art. 764

Save intention to the contrary expressed by the deceased in the way provided for in Article 971, a spouse entitled to inherit who actually occupied, at the time of the death, as his or her main habitation, a lodging belonging to the spouses or fully depending upon the succession, has on this lodging, until his or her death, a right of habitation and a right of use on the furniture, included in the succession, with which it is fitted.

Those rights of habitation and of use are exercised subject to the conditions provided for in Articles 627, 631, 634 and 635.

The spouse, the other heirs, or one of them may insist on an inventory of the movables and a statement of the immovable subjected to the rights of use and of habitation being drawn up.

Notwithstanding Articles 631 and 634, where it results from the situation of the spouse that the lodging subject to the right of habitation is no longer adapted to his or her needs, the spouse or his or her representative may lease it for an use other than commercial or rural in order to provide necessary means for new conditions of dwelling.

Art. 765

The value of the rights of habitation and use shall be appropriated to the value of the rights of succession taken by the spouse.

Where the value of the rights of habitation and use is lesser than that of the rights of succession, the spouse may take the remainder on the existing property.

Where the value of the rights of habitation and use is higher than that of his or her rights of succession, the spouse is not bound to compensate the succession on account of the excess.

Art. 765-1

A spouse has one year after the death in order to evidence his or her intention to benefit from those rights of habitation and use.

Art. 765-2

Where the lodging was the subject of a lease, a spouse entitled to inherit who, at the time of the death, actually occupied the premises as his or her main habitation benefits by the right of use upon the furniture, included in the succession, with which it is fitted.

Art. 766

A spouse entitled to inherit and the heirs may, by agreement, convert the rights of habitation and use into a life annuity or a capital.

Where a minor or a protected adult are among the parties to an agreement, the latter must be authorized by the judge of guardianships.

§ 4 - Of the Right to Maintenance

Art. 767

The succession of a predeceased spouse owes maintenance to a spouse entitled to inherit who is in need. The period within which to claim it is one year after the death or the time where the heirs cease to perform the payments they made before to the spouse. In case of undivided ownership the period shall be extended until the completion of the partition.

Periodical payments shall be obtained from the succession. They shall be borne by all the heirs and, in case of insufficiency, by all the specific legatees, in proportion to what they received.

If, however, the deceased expressly declared that such legacy should be paid in preference to the other, Article 927 shall apply.

CHAPTER IV - OF THE RIGHTS OF THE STATE

Art. 768

(Ord. n° 58-1307 of 23 Dec. 1958)

In absence of heirs, a succession is acquired by the State .

Art. 769

(Ord. n° 58-1307 of 23 Dec. 1958)

The administration of Domains which claims a right to a succession is bound to have seals affixed and to cause an inventory to be made in the forms prescribed for the acceptance of successions under benefit of inventory .

Art. 770

(Ord. n° 58-1307 of 23 Dec. 1958)

It must petition to obtain from the tribunal de grande instance in whose territorial jurisdiction the succession was opened, a court order to take possession.

It is dispensed from using the services of a counsel; the court shall rule on the petition three months and forty days after a notice and bill in the usual forms, and after having heard the Government procurator.

Where, the vacancy having been duly declared, the administration of Domains has been appointed curator, it may, before filing its petition, proceed by itself to the formalities of notice provided for in the preceding paragraph.

In all cases, bill-sticking shall be proved by a copy of the bill signed by the director of Domains and bearing a certificate of the mayor of the place of opening of the succession.

Art. 771 [repealed]

Art. 772

(Ord. n° 58-1307 of 23 Dec. 1958)

The administration of Domains which does not fulfil the formalities prescribed for it may be ordered to pay damages to the heirs, if any should appear.

Art. 773 [repealed]

CHAPTER V - OF THE ACCEPTANCE AND REPUDIATION OF SUCCESSIONS

Section I - Of Acceptance

Art. 774

A succession may be accepted outright or subject to benefit of inventory.

Art. 775

No one is obliged to accept a succession which devolves upon him .

Art. 776

(Act of 18 Feb. 1938)

Successions devolving on minors and on adults in guardianship may be lawfully accepted only in accordance with the provisions of the Title Of Minority, of Guardianship and of Emancipation.

Art. 777

The effects of acceptance go back to the day of the opening of the succession .

Art. 778

Acceptance may be express or by conduct: it is express where one assumes the title or capacity of heir in an authentic or private instrument; it is by conduct where the heir does an act which necessarily implies his intention of accepting and which he would be entitled to do only in his capacity as heir.

Art. 779

Acts of mere preservation, supervision and interim administration are not acts of acceptance of a succession, unless the title or capacity of heir has been assumed therein.

Art. 780

A gift, sale or assignment of his rights of inheritance made by one of the co-heirs, either to a stranger, or to all his co-heirs, or to some of them, involves on his part acceptance of the succession.

It shall be the same :

1° as to the renunciation, even gratuitous, which one of the heirs makes in favour of one or several of his co-heirs;

2° as to the renunciation which he makes in favour of all his co-heirs without distinction, where he receives the price of his renunciation.

Art. 781

Where a person to whom a succession has devolved dies without having repudiated it or without having accepted it expressly or by conduct, his heirs may accept or repudiate it on his behalf.

Art. 782

Where those heirs do not agree as to accepting or repudiating the succession, it must be accepted under benefit of inventory.

Art. 783

An adult may attack an acceptance, express or by conduct, which he made of a succession, only in the case where that acceptance was the result of a deception committed upon him: he may never claim on the ground that he suffered loss, except only in the case where the succession is absorbed or reduced more than one-half through the discovery of a will unknown at the time of the acceptance.

Section II - Of the Renunciation of Successions

Art. 784

Renunciation of a succession may not be presumed; it may only be made at the court office of the tribunal de grande instance in the arrondissement of which the succession was opened, on a special register kept for that purpose.

Art. 785

An heir who renounces shall be deemed to have never been an heir.

Art. 786

The share of a renouncing heir accrues to his co-heirs; where he is alone, it devolves upon the next degree.

Art. 787

One may never take by representation of an heir who renounced: where the person renouncing is the only heir in his degree, or where all the co-heirs renounce, children come in their own right and inherit by heads.

Art. 788

Creditors of one who renounces to the detriment of their rights may be authorized by the court to accept the succession on behalf of their debtor, in his place and stead.

In that case, the renunciation is avoided only in favour of the creditors and to the extent only of their claims: it is not so in favour of the heir who renounced .

Art. 789

The power to accept or repudiate a succession is extinguished by the length of time required for the longest prescription of immovable rights .

Art. 790

So long as prescription of the right to accept is not effective against the heirs who renounced, they have the power to still accept the succession, where it has not already been accepted by other heirs; without prejudice, however, to the rights which third parties may have acquired to property of the succession, either by prescription, or by transactions lawfully entered into with the curator of the vacant succession.

Art. 791

One may not, even by an ante-nuptial agreement, renounce the succession of a living person or transfer contingent rights which one may have to that succession.

Art. 792

Heirs who have misappropriated or concealed items of property of a succession, are deprived of the power to renounce it: they remain outright heirs, notwithstanding their renunciation, without being allowed to claim any share in the things misappropriated or concealed.

Section III - Of the Benefit of Inventory, of its Effects and of the Obligations of a Beneficiary Heir

Art. 793

The declaration of an heir, that he intends to assume that capacity only under benefit of inventory, must be made at the court office of the tribunal de grande instance in the arrondissement of which the succession was opened: it must be entered on the register designed for receiving acts of renunciation .

Art. 794

That declaration is effective only where it is preceded or followed by a true and exact inventory of the property of the succession, in the manner prescribed by the legislation on procedure, and within the periods which shall be hereafter specified.

Art. 795

An heir has three months for making the inventory, from the day of the opening of the succession.

He has in addition, for deliberating on his acceptance or renunciation, a period of forty days, which shall commence to run from the day of expiry of the three months given for the inventory, or from the day of the closing of the inventory if it was finished before the three months.

Art. 796

Where, however, there exist in the succession articles liable to waste away or costly to keep, an heir may, in his capacity of being entitled to inherit, and without there being an acceptance on his part thereby presumed, have himself authorized by the court to proceed to a sale of those articles.

That sale must be done by a public officer, after the bills and notice regulated by legislation on procedure.

Art. 797

While the periods for making an inventory and deliberating are elapsing, an heir may not be compelled to assume a capacity and no judgment may be obtained against him: where he renounces when the periods have elapsed or before, the expenses which he has lawfully incurred up to that time are the responsibility of the succession.

Art. 798

After the expiry of the above-mentioned periods, an heir, in case of proceedings brought against him, may require a new period which the court to which the matter was referred may grant or refuse according to the circumstances.

Art. 799

The costs of the proceedings, in the case of the preceding Article, are the responsibility of the succession, where the heir proves either that he had no knowledge of the death, or that the periods were insufficient, either because of the location of the property, or because of the controversies which have arisen : where he does not make that proof, the costs are his personal responsibility.

Art. 800

Nevertheless, after the expiry of the periods granted by Article 795, and even of those given by the judge under Article 798, an heir keeps the power to still make an inventory and to stand as heir beneficiary, where he has not acted as heir or where there does not exist against him a judgment having become res judicata which condemns him in the capacity of outright heir.

Art. 801

An heir who has been guilty of concealment or who has omitted, knowingly and in bad faith, to include articles of the succession in the inventory, is deprived of the benefit of inventory.

Art. 802

The effect of the benefit of inventory is to give an heir the advantage:

1° To be obliged to pay the debts of the succession only to the extent of the value of the property which he receives, and even to be allowed to discharge himself from paying the debts by abandoning all the property of the succession to the creditors and legatees;

2° Not to mingle his personal property with that of the succession, and to keep against it the right to ask for payment of his claims.

Art. 803

A beneficiary heir is responsible for administering the property of the succession, and must account for his administration to creditors and legatees.

He may be constrained as to his personal property only after having been given notice to present his account, and having failed to comply with that obligation.

After an auditing of the account, he may be constrained as to his personal property only to the extent of the balance of which he is debtor.

Art. 804

He is liable only for gross faults in the administration for which he has charge.

Art. 805

He may sell movables of the succession only through a public officer, by auction and after the usual bills and notices.

Where he produces them in kind, he is liable only for depreciation or deterioration caused by his negligent conduct.

Art. 806

He may sell immovables only in the forms prescribed by the rules of procedure; he is obliged to transfer the proceeds thereof to mortgage creditors who made themselves known.

Art. 807

Where creditors or other persons concerned so require, he is obliged to give good and solvent security for the value of the movables contained in the inventory and for the portion of the proceeds of the immovables not transferred to mortgage creditors.

Where he fails to give that security, the movables shall be sold and the proceeds thereof deposited, as well as the proceeds not transferred of the immovables, for the purpose of discharging the liabilities of the succession.

Art. 808

Where there are attaching creditors, a beneficiary heir may pay only in the order and manner fixed by the judge.

Where there are no attaching creditors he shall pay creditors and legatees as they present themselves.

Art. 809

Creditors who did not attach, who present themselves after the auditing of the account and the payment of the balance , may only exercise their remedies against the legatees.

In either case, the remedy is time-barred after the lapse of three years, after the day of the auditing of the account and the payment of the balance.

Art. 810

Costs of seals, if any have been affixed, of inventory and of account, are charged against the succession .

Section IV - Of Vacant Successions

Art. 811

Where, after expiry of the periods for making the inventory and deliberating, no one presents himself to claim a succession, and there are no known heirs or the known heirs have renounced, the succession is deemed vacant.

Art. 812

The tribunal de grande instance in whose arrondissement it is opened, shall appoint a curator on request of the persons concerned, or on demand of the Government procurator.

Art. 813

A curator of a vacant succession is obliged first of all to have its state of being established by an inventory: he shall exercise and enforce its rights; he shall answer claims brought against it; he shall administer, with the responsibility of having the funds forming part of the succession, as well as the proceeds from the sale of movables or immovables, deposited into the funds of the receiver of the national office for the preservation of rights and with the responsibility of accounting to whomever it may belong.

Art. 814

The provisions of Section III of this Chapter, on the forms of an inventory, the method of administration, and the accounts to be rendered by a beneficiary heir, shall apply moreover to curators of vacant successions, "insofar as they are not contrary to the provisions of Articles 1000 and 1001 of the Code of Civil Procedure" (Ord. n° 58-1007 of 24 Oct. 1958) .

CHAPTER VI - OF PARTITION AND OF COLLATIONS

Section I - Of Undivided Ownership and of the Action for Partition

Art. 815

(Act n° 76-1286 of 31 Dec. 1976)

No one may be compelled to remain in undivided ownership and a partition may always be induced, unless it was delayed by judgment or agreement .

"On request of an undivided co-owner, a court may delay partition" (Act n° 78-627 of 10 June 1978) for two years at the most where its immediate carrying out could affect the value of the undivided property "or where one of the undivided co-owners can settle in an agricultural holding depending on the succession only at the end of that period" (Act n° 80-502 of 4 July 1980). That delay may be applied to the whole of the undivided property or only to part of it .

Furthermore, where undivided co-owners wish to remain in undivided ownership, the court may, on request of one or several of them, on the basis of the interests as they stand, and without prejudice to the application of Articles 832 to 832-3, allot his share, after appraisal, to the one who sought partition, either in kind, if it can easily be disjoined from the remainder of the undivided property, or in money, if the allotment in kind cannot be conveniently made, or if the applicant expresses his preference for it; where there is not a sufficient sum in the undivided property, the complement shall be remitted by those of the undivided co-owners who concurred in the request, without prejudice to the possibility for the other undivided co-owners to participate in it if they express the wish of doing so. The share of each of them in the undivided property shall be increased in proportion to his remittance.

Art. 815-1

(Act n° 76-1286 of 31 Dec. 1976)

Failing an amicable agreement, undivided ownership of an agricultural holding forming an economic unit and whose development was secured by the deceased or by his or her spouse may be maintained, under the terms fixed by the court, on request of the persons referred to in paragraphs 3 and 4 below . The court shall rule on the basis of the interests as they stand and of the possibilities of existence which the family can derive from the undivided property. The maintenance of undivided ownership remains possible where the holding includes elements of which the heir or the spouse was already owner or co-owner before the opening of the succession.

Undivided ownership may also be maintained on request of the same persons and under the terms fixed by the court, as regards ownership of premises used for habitation or for professional purposes which, at the time of the death, were actually used for that habitation or for those purposes by the deceased or his or her spouse. It shall be the same for movable articles which are useful for the exercise of the profession.

Where the deceased leaves one or several minor descendants, the maintenance of undivided ownership may be requested either by the surviving spouse, or by any heir, or by the statutory representative of the minors.

In the absence of minor descendants, the maintenance of undivided ownership may be requested only by the surviving spouse and provided that he was before the death, or has become by reason of the death, co-owner of the agricultural holding or of the premises used for habitation or for professional purposes. If it is a case of premises used for habitation, the spouse must have resided on the spot at the time of the death.

Maintenance of undivided ownership may not be prescribed for a duration longer than five years. In may be renewed, in the case provided for in paragraph 3, until the coming of age of the youngest of the descendants, and, in the case provided for in paragraph 4, until the death of the surviving spouse.

Art. 815-2

(Act n° 76-1286 of 31 Dec. 1976)

Any undivided owner may take the necessary steps for the preservation of the undivided property.

He may use for that purpose funds of the undivided property which he holds, and he is deemed to have the free disposal of them with regards to third parties.

Failing funds of the undivided property, he may compel his undivided co-owners to make with him the necessary expenditures.

Where undivided property is encumbered with an usufruct, those powers are effective against the usufructuary to the extent that the latter is responsible for repairs.

Art. 815-3

(Act n° 76-1286 of 31 Dec. 1976)

Acts of administration and disposition relating to undivided property require the consent of all the undivided co-owners . They may give to one or several of them general authority for administration. A special authority is required for any act which does not belong to a normal management of the undivided property, as well as for the conclusion and renewal of leases.

Where one undivided owner takes up the management of the undivided property, with the knowledge of the others and nevertheless without opposition on their part, he is deemed to have received an implied authority, covering acts of administration, but not acts of disposition or conclusion or renewal of contracts.

Art. 815-4

(Act n° 76-1286 of 31 Dec. 1976)

Where one of the undivided owners is unable to express his intention, another may be judicially entitled to represent him, in a general manner or for some particular transactions, the terms and extent of that representation being fixed by the judge.

Failing statutory power, contractual authority or judicial entitlement, the acts done by a undivided owner on behalf of another are effective with regard to the latter under the rules of management of another’s business.

Art. 815-5

(Act n° 76-1286 of 31 Dec. 1976)

An undivided owner may be judicially authorized to do alone an act for which the consent of an undivided co-owner would be required, where the refusal of the latter imperils the common interest.

"The judge may not, on request of a bare-owner, order the sale of the full ownership of a property encumbered with an usufruct, against the wish of the usufructuary" (Act n° 87-498 of 6 July 1987).

An act made within the terms fixed by the judicial authorization is effective against the undivided owner whose consent was wanting .

Art. 815-6

(Act n° 76-1286 of 31 Dec. 1976)

The president of the tribunal de grande instance may prescribe or authorize all urgent measures which the common interest requires .

He may in particular authorize an undivided owner to collect from debtors of the undivided property or from depositaries of undivided money funds designed to meet urgent needs, while prescribing, where required, the terms of their use. That authorization does not involve qualifying as regards a surviving spouse or a heir.

He may also, either designate an undivided owner as administrator with obligation if there is occasion of giving security, or appoint a sequestrer. Articles 1873-5 to 1873-9 of this Code shall apply as may be thought proper to the powers and obligations of the administrator, unless they are otherwise regulated by the judge.

Art. 815-7

(Act n° 76-1286 of 31 Dec. 1976)

The president of the court may also prohibit the shifting of tangible movables reserving the right to specifying those of which he grants the personal usage to one or another of the persons entitled, under the responsibility on the latter to give security, if he deems it necessary.

Art. 815-8

(Act n° 76-1286 of 31 Dec. 1976)

Whoever collects revenues or incurs expenses for the account of the undivided ownership must keep a statement of them which is at the disposal of the undivided owners.

Art. 815-9

(Act n° 76-1286 of 31 Dec. 1976)

Each undivided owner may use and enjoy undivided property in accordance with its destination, to the extent compatible with the rights of the other undivided owners and with the effect of the acts lawfully made in the course of the undivided ownership. Failing an agreement

between the persons concerned, the exercise of that right shall be regulated, provisionally, by the president of the court .

An undivided owner who uses or enjoys privately an undivided thing is liable to an indemnity, unless otherwise agreed .

Art. 815-10

(Act n° 76-1286 of 31 Dec. 1976)

Fruits and revenues of undivided property accrue to the undivided ownership, in default of interim partition or of any other agreement establishing divided enjoyment.

No inquiry relating to fruits and revenues may, however, be admissible more than five years after the date on which they were or could have been collected.

Each undivided owner is entitled to benefits coming from undivided property and bears the loss in proportion to his rights in the undivided property.

Art. 815-11

(Act n° 76-1286 of 31 Dec. 1976)

Any undivided owner may claim his annual share in the benefits, less the expenses involved by acts to which he consented or which are effective against him.

Failing another title, the extent of the rights of each in the undivided ownership results from the affidavit or from the abstract of inventory drawn up by the notaire .

In case of controversy, the president of the tribunal de grande instance may order an interim distribution of the benefits, subject to an account to be made before the final liquidation.

Up to the amount of available money, he may likewise order an advance in capital on the rights of an undivided owner in the partition to come.

Art. 815-12

(Act n° 76-1286 of 31 Dec. 1976)

An undivided owner who manages one or several undivided items of property is accountable for the products of his management. He is entitled to compensation for his activity on terms fixed amicably or, failing which, by judicial decision.

Art. 815-13

(Act n° 76-1286 of 31 Dec. 1976)

Where an undivided owner has improved at his expenses the condition of undivided property, account of it must be taken for him according to equity, with regard to the increase in value of the property at the time of partition or of transfer. Account shall be taken likewise for him of the necessary outlays he made out of his own money for the preservation of said property, even though they did not improve it.

Reciprocally, an undivided owner is responsible for degradations and deteriorations which have diminished the value of the undivided property through his act or fault.

Art. 815-14

(Act n° 76-1286 of 31 Dec. 1976)

An undivided owner who intends to transfer, for value, to a person outside the undivided ownership, all or part of his rights in the undivided property or in one or several articles of that property shall give notice by extra-judicial act to the other undivided owners of the price and terms of the planned transfer as well as of the name, domicile and occupation of the person who intends to acquire it.

Any undivided owner may, within the period of one month following that notice, make known to the transferor, by extra-judicial act, that he exercises a right of pre-emption at the price and terms of which he was notified.

In case of pre-emption, the person who is exercising it shall have an instrument of sale drafted within a period of two months, counting from the date of sending his reply to the seller. After that period, his declaration of pre-emption is void by operation of law, fifteen days after a

notice of default remained ineffective, and without prejudice to damages which may be claimed of him by the seller .

Where several undivided owners exercise their rights of pre-emption, unless otherwise agreed, they are deemed to acquire together the portion put up for sale in proportion to their respective shares in the undivided ownership.

Where terms of payment have been granted by the transferor, Article 833-1 shall apply.

Art. 815-15

(Act n° 76-1286 of 31 Dec. 1976)

Where there is occasion for an auction of all or part of the rights of an undivided owner in undivided property or in one or more articles of that property, the counsel or notaire must inform the undivided owners of it by notice one month before the date planned for the sale. "Each undivided owner may take the place of the purchaser within a period of one month after the auction, by declaration at the court office or with the notaire" (Act n° 78-627 of 10 June 1978).

The particulars established for the purpose of the sale must mention the rights of substitution.

Art. 815-16

(Act n° 76-1286 of 31 Dec. 1976)

Every transfer or auction made in defiance of Articles 815-14 and 815-15 is void. An action for annulment is time-barred after five years. It may be brought only by those on whom notices were to be served or by their heirs.

Art. 815-17

(Act n° 76-1286 of 31 Dec. 1976)

Creditors who might have levied execution on the undivided property before there was undivided ownership, and those whose claims result from the preservation or management of the undivided property, shall be paid by deduction from the assets before partition. They may, in addition, conduct attachment or seizure and sale of the undivided property.

Personal creditors of an undivided owner may not attach or seize the latter's share in undivided property, whether movable or immovable.

They have, however, the power to instigate partition in the name of their debtor or to intervene in a partition instigated by him. The undivided co-owners may stop the course of the action for partition by discharging the obligation in the name and on behalf of the debtor. Those who exercise that power shall be reimbursed by deduction from the undivided property.

Art. 815-18

(Act n° 76-1286 of 31 Dec. 1976)

The provisions of Articles 815 to 815-17 shall apply to undivided property in usufruct to the extent that they are consistent with the rules on usufruct.

The notices provided for in Articles 815-14, 815-15 and 815-16 must be served on any bare owner and on any usufructuary. But a usufructuary may acquire a share in bare ownership only where no bare owner offers to acquire it; a bare owner may acquire a share in usufruct only where no usufructuary offers to acquire it.

Art. 816

A partition may be applied for even where one of the heirs has enjoyed separately a part of the property of the succession, if there was no instrument of partition nor possession adequate to acquire prescription .

Art. 817

(Act of 19 June 1939)

As regards minors or adults in guardianship, an action for partition may be brought by their guardians specially authorized by a family council.

As regards absent coheirs, the action belongs to the relatives vested with possession.

Art. 818 [repealed]

Art. 819

(Act n° 85-1372 of 23 Dec. 1985)

Where all the heirs are present and fully capable, a partition may be made in such manner and through such act as the parties deem proper .

Art. 820

(Act n° 85-1372 of 23 Dec. 1985)

Property of a succession may, in whole or in part, be subject to measures of preservation, such as the affixing of seals, on request of a party concerned or of the Government procurator's office, under the conditions and following the forms determined by the Code of Civil Procedure.

Art. 821 [repealed]

Art. 822

(D.-Law of 17 June 1938)

An action for partition and the controversies arising either on the occasion of maintaining undivided ownership or during the proceedings of partition, shall be, on pain of annulment, submitted only to the court of the place of opening of the succession; it is before that court that auctions shall be made and that claims relating to the warranty of shares between coparceners and those for rescission of a partition shall be brought. In the case where an attempt to conciliation as provided for in Article 48 [repealed] of the Code of Civil Procedure takes place, the judge of the tribunal d'instance of the place of opening of the succession shall alone be competent, on pain of annulment.

(Act of 15 Dec. 1921) Where all the parties agree, the court may be seized of an application for partition through a collective request signed by their counsels. If there is occasion for an auction, the request shall contain an upset price which will serve as an appraisal. In that case, the judgment shall be handed down in chambers and is not appealable where the submissions of the request are accepted by the court without modification.

(Act of 19 June 1939) The provisions of the preceding paragraphs shall apply without need of a previous authorization, whatever the capacity of the party concerned may be and even where he is represented by a judicial agent.

Art. 823

Where one of the coheirs refuses to consent to a partition, or where controversies arise, either as to the way of proceeding, or as to the manner of settling it, the court shall decide as in summary matters, or shall appoint, if necessary, for the proceedings of partition, one of the judges, on whose report it shall decide the controversies.

Art. 824

Appraisal of the immovables shall be made by experts chosen by the parties concerned, or, upon their refusal, appointed by the court of its own motion.

The memorandum of the experts shall state the basis of the appraisal; it shall indicate whether the article appraised can be conveniently partitioned; in what manner; finally, in case of partition, it shall fix each one of the shares that can be formed therefrom, and their value.

Art. 825

Appraisal of the movables, where there was no valuation in a regular inventory, must be made by knowledgeable persons, at a fair price and without increase.

Art. 826

Each one of the coheirs may claim his share of the movables and immovables of the succession in kind: nevertheless, where there are attaching or seizing creditors, or where the majority of the coheirs deem a sale necessary for the discharge of the debts and liabilities of the succession, movables shall be sold publicly in the ordinary manner.

Art. 827

(D.-Law of 17 June 1938)

Where the immovables cannot be conveniently partitioned or allocated in the conditions provided for by this Code, a sale by auction must take place before the court.

The parties, however, where they are all of full age, may consent that the auction be held before a notaire, on the choice of whom they agree.

Art. 828

After the immovables and movables have been appraised and sold, if there is occasion, the supervising judge shall send the parties before a notaire upon whom they agree, or whom he appoints of his own motion, if the parties do not agree upon a choice.

Before that officer shall be determined the accounts of what the parties may owe each other, the formation of the general mass, the composition of the shares and the allotments to be made to each of the coparceners.

Art. 829

Each coheir shall return to the mass, according to the rules hereafter laid down, the gifts which have been made to him and the sums of which he is debtor.

Art. 830

Where collation is not made in kind, the coheirs to whom it is owed, shall appropriate an equivalent portion from the mass of the succession.

Appropriations shall be made, as far as possible, on things of the same kind, character and good quality as those not returned in kind.

Art. 831

After those appropriations, out of what remains of the mass, the composition is made of as many equal shares as there are coparcener heirs or coparcener stocks.

Art. 832

(D.-Law of 17 June 1938)

In forming and composing shares, the parcelling out of lands and the splitting up of holdings must be avoided.

In so far as parcelling out of lands and splitting up of holdings can be avoided, each share must, as far as possible, be composed, in whole or in part, of movables or immovables, of rights or of claims of equivalent value.

"A surviving spouse or any co-owner heir may request a preferential allotment by way of partition, under the responsibility of a compensation, if any, of any agricultural holding, or part of agricultural holding, constituting an economic unit, or undivided portion of an agricultural unit, even formed in part from a property of which he was already owner or co-owner before the death, in whose development he actually participates or participated; in the case of an heir, the requirement as to participation may have been fulfilled by his or her spouse. If there is occasion, the request for preferential allotment may bear on shares of the capital, without prejudice to the application of the statutory provisions or of articles of association on the continuation of a partnership with the surviving spouse or one or several heirs.

"The same rules shall apply to any commercial, industrial or craft concern, whose importance does not exclude a family nature " (Act n° 82-596 of 10 July 1982).

(Act n° 80-502 of 4 July 1980) In the case where neither the surviving spouse, nor any co-owner heir requests the application of the provisions provided for in paragraph 3 above or those of Articles 832-1 or 832-2, preferential allotment may be granted to any coparcener

provided he obliges himself to give on lease, within a period of six months, the property under consideration under the terms fixed in Chapter VII of Title I of Book VI [Chapter VI of Title I of Book IV] of the Rural Code to one or several of the coheirs fulfilling the personal requirements provided for in paragraph 3 above or to one or several descendants of those coheirs fulfilling the same conditions .

A surviving spouse or any co-owner heir may also request preferential allotment :

Of the ownership or right to lease of the premises which actually serve him or her as habitation, where he or she had residence here at the time of the death ", with the furniture which garnishes them" (Act n° 2001-1135 of 3 Dec. 2001);

Of the ownership or right to lease of the premises used for professional purposes which serve actually for the exercise of his or her occupation and of the furniture for professional purposes which garnishes the premises;

Of the whole of movable articles necessary for the holding of a rural property farmed by the deceased as tenant farmer or sharecropper where the lease continues for the profit of the applicant or where a new lease is granted to the latter.

Preferential allotment may be sought jointly by several persons entitled to inherit. "Preferential allotment of the ownership of the premises and of the furniture which gaenishes it, referred to in paragraph 7, is as of right for a surviving spouse" (Act n° 2001-1135 of 3 Dec. 2001).

"In the circumstances referred to in the preceding paragraph, an allottee surviving spouse may require from his coparceners periods, which may not exceed ten years, for payment of a fraction of the balance, equal to a half at the most. Unless otherwise agreed, the sums remaining due bear an interest at the statutory rate.

"In case of sale of the premises or of the furniture which garnishes them, the fraction of the balance which relates to it becomes immediately due; in case of partial sales, the proceeds of those sales shall be paid to the coparceners and appropriated to the fraction of the balance still due.

"Rights resulting from a preferential allotment may not prejudice rights for life of use and habitation which a spouse may exercise under Article 764" (Act n° 2001-1135 of 3 Dec. 2001).

"Failing an amicable agreement, a request for preferential allotment shall be brought before the court, which shall decide on the basis of the interest as they stand; in case of several requests relating to a holding or a concern, the court shall take into account the fitness of the various applicants to manage that holding or concern and to remain therein, and in particular the duration of their personal taking part in the operation of the holding or of the concern" (Act n° 82-596 of 10 July 1982) .

Property which forms the subject of the allotment shall be appraised at its value on the day of partition .

Unless otherwise amicably agreed between the coparceners, a balance which may be oxed shall be paid cash .

Art. 832-1

(Act n° 80-502 of 4 July 1980)

Notwithstanding the provisions of Article 832, paragraphs "14 and 16 " (Act n° 2001-1135 of 3 Dec. 2001) and unless maintenance in undivided ownership is requested under Articles 815, paragraph 2, and 815-1, preferential allotment referred to in Article 832, paragraph 3, is as of right as regards any agricultural holding which does not exceed the limits of surface fixed by decree in Conseil d'État. In case of several requests, the court shall designate the allottee or joint allottees on the basis of the interests as they stand and of the fitness of the various applicants to manage the holding and to remain therein .

In the circumstances referred to in the preceding paragraph, even where a preferential allotment was judicially granted, the allottee may require from his coparceners periods which may not exceed ten years for payment of a fraction of the balance, equal to a half at most. Except otherwise agreed, sums remaining due bear interest at the statutory rate.

(Act n° 61-1378 of 19 Dec. 1961) In case of sale of the whole of an allotted property the fraction of the balance remaining owed becomes immediately due; in case of partial sales, the proceeds of those sales shall be paid to the coparceners and appropriated to the fraction of the balance still due.

[repealed]

Art. 832-2

(Act n° 80-502 of 4 July 1980)

Where maintenance in undivided ownership was not ordered under Articles 815, paragraph 2, and 815-1, and failing a preferential allotment in ownership provided for in Articles 832, paragraph 3, or 832-1, a surviving spouse or any co-owner heir may request preferential allotment of all or part of immovable property or rights for agricultural purposes depending on the succession, with a view to establishing an agricultural land grouping with one or several coheirs and, as the case may be, one or several third persons.

That allotment is of right where the surviving spouse or one or several of the coheirs fulfilling the personal qualifications provided for in Article 832, paragraph 3, require that there be given them on lease all or part of the property of the grouping, subject to the conditions laid down in Chapter VII of Title I of Book VI [Chapter VI of Title I of Book IV] of the Rural Code.

In case of several requests, the property of the grouping may, where its composition so permits, be the subject of several leases benefiting different coheirs; otherwise, and failing an amicable agreement the court shall designate the lessee taking into account the fitness of the various applicants to manage the property concerned and to remain therein. Where the terms and conditions of that lease or of those leases were not the subject of an agreement, they shall be fixed by the court.

The immovable property and rights which the applicants do not intend to contribute to the agricultural land grouping, together with the other property of the succession, shall be allotted by priority, within the limits of their respective rights of succession, to the undivided owners who did not agree to the formation of the grouping. Where those undivided owners do not obtain the whole of their rights through the allotment thus made, a balance must be paid to them. Unless otherwise amicably agreed between the coparceners, a balance which may be owed shall be paid within the year following the partition. It may be effected through a giving in payment under the form of shares in the agricultural land grouping, unless the parties concerned, within the month following the proposal made to them, make known their opposition to that mode of payment.

Partition is complete only after the signature of the instrument of constitution of the agricultural land grouping and, if there is occasion, of the long-term lease or leases.

Art. 832-3

(Act n° 80-502 of 4 July 1980)

Where an agricultural holding constituting an economic unit and not operated under the form of a partnership is not maintained in undivided ownership under Articles 815, paragraph 2, and 815-1, and was not the subject of a preferential allotment within the terms provided for in Articles 832, 832-1 or 832-2, a surviving spouse or any co-owner heir who wishes to continue the exploiting in which he or she actually participates or participated may require, notwithstanding any request for auction, that the partition be concluded subject to the condition that his or her coparceners grant to him or her a long-term lease under the terms fixed in Chapter VII of Title I of Book VI [Chapter VI of Title I of Book IV] of the Rural Code, on the lands of the holding which fall to them. Unless otherwise amicably agreed between the parties, the one who requests to benefit by those provisions shall receive by priority in his or her share the buildings for exploitation and habitation.

The preceding provisions shall apply to a part of an agricultural holding which can constitute an economic unit.

Account shall be taken, if there is occasion, of depreciation due to the existence of a lease in the appraisal of the lands included in the various shares.

Articles 807 and 808 [L. 412-14 and L. 412-15] of the Rural Code shall determine the specific rules for the lease referred to in the first paragraph of this Article.

Where there are several requests, the tribunal de grande instance shall designate the beneficiary or beneficiaries on the basis of the interests as they stand and of the fitness of the various applicants to manage all or part of the holding or to remain therein.

Where, due to the obvious unfitness of the applicant or applicants to manage all or part of the holding, the interests of the coheirs risk being imperilled, the court may decide that there is no occasion to apply the first three paragraphs of this Article.

An economic unit referred to in paragraph 1 can be formed in part of property of which a surviving spouse or a heir was already owner or co-owner before the death. As regards a heir, the requisite of participation may have been fulfilled by his or her spouse.

Art. 832-4

(Act n° 80-502 of 4 July 1980)

The provisions of Articles 832, 832-1, 832-2 and 832-3 shall benefit a spouse or any heir, whether co-owner in full or bare ownership .

The provisions of Articles 832, 832-2 and 832-3 shall benefit also a beneficiary, universal or by universal title, of the succession by virtue of a will or of a contractual institution.

Art. 833

Inequality of shares in kind shall be compensated by a reversion, either in the form of an annuity, or in money.

Art. 833-1

(Act n° 71-523 of 3 July 1971)

Where the debtor of a balance has obtained time for payment and, as a result of economic circumstances, the value of the property put in his share has increased or lessened by more than one-fourth since the partition, the sums remaining due shall increase or lessen in the same proportion.

The parties may, however, agree that the amount of the balance will not vary.

Art. 834

Shares are made by one of the coheirs where they can agree between themselves on the choice and where the one chosen accepts the charge: otherwise the shares shall be made by an expert appointed by the supervising judge.

They shall then be drawn by lots.

Art. 835

Before drawing the lots, each coparcener is allowed to present objections as to their formation.

Art. 836

The rules established for the division of the masses to be partitioned shall also be followed in the subdivision to be made between the coparcener stocks.

Art. 837

Where, in operations referred to a notaire, controversies arise, the notaire shall draw up a memorandum of the difficulties and respective statements of the parties, and shall refer them to the supervisor appointed for the partition; and as to other issues, proceedings shall be conducted as prescribed by legislation relating to procedure.

Art. 838

(Act n° 64-1230 of 14 Dec. 1964)

Where all coheirs are not present, a partition must be made in court, under the rules of Articles 819 to 837.

It shall be the same where there are among them non-emancipated minors or adults in guardianship, subject to Article 466.

Where there are several minors, a special and distinct guardian may be given to each of them.

Art. 839

(Act n° 64-1230 of 14 Dec. 1964)

Where there is occasion for an auction, in the case provided for in paragraph 1 of the preceding Article, it may be made only in court with the formalities prescribed for the transfer of the property of minors. Outsiders shall always be admitted.

Art. 840

(Act n° 64-1230 of 14 Dec. 1964)

Partitions made in accordance with the rules above prescribed in the name of "presumed absentees" (Act n° 77-1447 of 28 Dec. 1977) and persons not present are final; they are temporary only where the prescribed rules were not complied with.

Art. 841 [repealed]

Art. 842

After partition, each coparcener shall receive the instruments of title pertaining to the property which falls on him.

Instruments of title of a divided property shall remain to the one who has the largest part, with the responsibility to assist with them those of his coparceners who have an interest therein, where he is required to do so.

Instruments of title common to a whole inheritance shall be delivered to the one whom all the heirs have chosen to be the depositary of them, with the responsibility to assist the coparceners with them, whenever required. Where there is a difficulty about that choice, it shall be regulated by the judge .

Section II - Of the Collations, Appropriation and Abatement of Gratuitous Transfers Made to Persons Entitled to Inherit

Art. 843

(Act of 24 March 1898)

Every heir, even beneficiary, coming into a succession, shall return to his coheirs everything he has received from the deceased, by gift inter vivos, directly or indirectly; he may not keep the gifts made to him by the deceased unless they were made expressly over and above his share, or with exemption from collation.

Legacies made to a heir are deemed to be made over and above his part, unless the testator has expressed his wish to the contrary, in which case the legatee may only claim his legacy by taking less.

Art. 844

(Act n° 71-523 of 3 July 1971)

Gifts made over and above the share or with exemption from collation may be retained, and legacies may be claimed by an heir coming into a partition, only up to the amount of the disposable portion: the excess is subject to reduction .

Art. 845

An heir who renounces a succession may nevertheless retain the gift inter vivos or claim the legacy made to him up to the amount of the disposable portion.

Art. 846

A donee who was not a presumptive heir at the time of the gift, but who is entitled to inherit on the day of the opening of the succession, is also bound to collation, unless the donor has exempted him from it.

Art. 847

Gifts and legacies made to the son of a person who is entitled to inherit at the time of the opening of the succession, are always deemed to have been made with exemption from collation.

The father coming to the succession of the donor is not bound to collate them.

Art. 848

Likewise, a son coming in his own right to the succession of the donor is not bound to collate a gift made to his father, even if he has accepted the latter's succession; but where the son comes only by representation, he shall collate what was given to his father, even in the case where he has repudiated his succession.

Art. 849

Gifts and legacies made to the spouse of a spouse entitled to inherit are deemed to be made with exemption from collation.

Where gifts and legacies are made jointly to two spouses, one of whom only inherits, the latter collates the half; where the gifts are made to the spouse entitled to inherit, he or she shall collate the whole.

Art. 850

Collation is made only to the succession of the donor.

Art. 851

Collation is due for what has been devoted to the settling of one of the coheirs, or for the payment of his debts.

Art. 852

The expenses of food, support, education, apprenticeship, the ordinary costs of outfitting, those of weddings and usual presents, shall not be collated.

Art. 853

It shall be the same with profits which a heir may have made out of agreements entered into with the deceased, where those agreements did not offer any indirect advantage when they were made.

Art. 854

Likewise, no collation is due for partnerships concluded without fraud between the deceased and one of his heirs, where the articles thereof were regulated by an authentic instrument.

Art. 855

(Act n° 71-523 of 3 July 1971)

A property which perishes through a fortuitous event and without fault of the donee is not subject to collation.

Where, however, that property was restored through an indemnity received because of its loss, a donee shall collate it in the proportion that the indemnity served to restore it.

Where the indemnity was not used for that purpose, it is itself subject to collation .

Art. 856

Fruits and interests from things subject to collation are due only from the day of the opening of the succession.

Art. 857

Collation is only due by a coheir to his coheir; it is not due to legatees nor to creditors of the succession.

Art. 858

(Act n° 71-523 of 3 July 1971)

Collation is made by taking less. It may not be required in kind unless otherwise stipulated in the instrument of gift.

In case of such a stipulation, conveyances and creations of real rights granted by the donee are extinguished in consequence of collation, unless the donor has consented to them.

Art. 859

(Act n° 71-523 of 3 July 1971)

An heir also has the power to collate in kind property given which still belongs to him provided that property be free from any encumbrance or occupancy with which it was not already burdened at the time of the gift.

Art. 860

(Act n° 71-523 of 3 July 1971)

Collation is due of the value of the property given at the time of partition, according to its condition at the time of the gift.

Where the property was transferred before partition, account shall be taken of the value it had at the time of transfer and, where a new property was substituted for the property transferred, of the value of that new property at the time of partition.

The whole, unless otherwise stipulated in the instrument of gift.

Where it results from such a stipulation that the value to be collated is less than the value of the property determined according to the rules of appraisal provided for by Article 922 below, that difference forms an indirect advantage vested in the donee over and above his share.

Art. 861

(Act n° 71-523 of 3 July 1971)

Where collation is made in kind and the condition of the property given was improved by the act of the donee, account thereof must be taken to him, in consideration of that by which their value has increased at the time of partition or transfer.

Likewise account must be taken to the donee of the necessary expenses which he made for the preservation of the property, even if they have not improved it.

Art. 862

(Act n° 71-523 of 3 July 1971)

A coheir who makes collation in kind may retain possession of the property given until the sums due to him for expenses or improvements have been actually reimbursed.

Art. 863

(Act n° 71-523 of 3 July 1971)

A donee, on his part, must, in case of collation in kind, account for degradations and deteriorations which have reduced the value of the property given through his act or fault.

Art. 864

(Act n° 71-523 of 3 July 1971)

A gift made in advance of his share to a compulsory heir who accepts the succession shall be appropriated to his share of reserve and, subsidiarily to the disposable portion, unless otherwise agreed in the instrument of gift.

The excess is subject to abatement.

A gift made in advance of his share to a compulsory heir who renounces the succession is treated as a gift over and above the donee's share.

Art. 865

(Act n° 71-523 of 3 July 1971)

A gratuitous transfer made over and above the beneficiary's share shall be appropriated to the disposable portion. The excess is subject to abatement.

Art. 866

(Act n° 71-523 of 3 July 1971)

Gifts made to a person entitled to inherit, or to persons entitled to inherit, jointly, which exceed the disposable portion may be retained in whole by the beneficiaries, whatever the excess may be, provided they compensate the coheirs in money.

Art. 867

(Act n° 71-523 of 3 July 1971)

Where a legacy made to a person entitled to inherit, or to persons entitled to inherit, jointly, relates to a property or several items of property which compose a whole whose value exceeds the disposable portion, the legatee or legatees may, whatever the excess, claim in totality the subject matter of the gratuitous transfer, provided they compensate the coheirs in money. It shall be likewise even where the gratuitous transfer involves movable items of property which were in the common use of the deceased and of the legatee .

Art. 868

(Act n° 71-523 of 3 July 1971)

Where abatement may not be required in kind, a donee or legatee is debtor for an indemnity equivalent to the excess portion of the abatable gratuitous transfer. That indemnity shall be calculated according to the value of the articles donated or bequeathed at the time of partition, and their condition on the day when the gratuitous transfer took effect.

It is payable at the time of partition, save agreement between the coheirs. However, where the subject matter of the gratuitous transfer is an item of the property which may be the subject of a preferential allotment, periods may be granted by the court, account being taken of the interests as they stand, if they were not granted by the transferor. The granting of those periods may not in any case have the effect of deferring payment of the indemnity beyond ten years from the opening of the succession. The provisions of Article 833-1 shall then apply to the payment of the sums due.

Failing agreement or stipulation to the contrary, those sums bear interests at the statutory rate in civil matters. Advantages resulting from periods and methods of payment granted do not constitute a gratuitous transfer.

In case of sale of the whole of a property donated or bequeathed, the sums remaining due become immediately due; in case of partial sales, the proceeds of those sales are paid to the coheirs and appropriated to the sums still due.

Art. 869

(Act n° 71-523 of 3 July 1971)

Collation of a sum of money is equal to its amount. Where, however, it was used to acquire property, collation of the value of that property is due, in the way provided for in Article 860 .

Section III - Of the Payment of Debts

Art. 870

Coheirs contribute between themselves to the payment of the debts and liabilities of the succession, each one in proportion to what he takes from it.

Art. 871

A legatee under universal title contributes with the heirs pro rata to his benefit; but a specific legatee is not held for the debts and liabilities, except however a foreclosure action against a bequeathed immovable.

Art. 872

Where immovables of a succession are encumbered by annuities with a special mortgage, each coheir may require that the annuities be reimbursed and the immovables freed before the composing of the shares. Where the coheirs partition the succession in the condition in which it stands, the encumbered immovable must be appraised at the same rate as the other immovables; the capital of the annuity shall be deducted from the total value; the heir in whose share that immovable falls has alone the charge of servicing the annuity and is liable for it towards his coheirs.

Art. 873

Heirs are held to the debts and liabilities of the succession personally for their equal share and portion, and by mortgage for the whole; subject to their remedy either against their coheirs, or against the universal legatees, for the part to which the latter must contribute.

Art. 874

A specific legatee who has paid a debt encumbering a bequeathed immovable remains subrogated to the rights of the creditor against the heirs and successors under universal title.

Art. 875

A coheir or successor under universal title who, because of a mortgage, has paid more than his share of a common debt, has a remedy against the other heirs or successors under universal title only for the share which each of them must bear personally, even in the case where the coheir who paid the debt has caused himself to be subrogated to the rights of the creditor; without prejudice, however, of the rights of a coheir who, because of benefit of inventory, has retained the power to demand payment of his personal claim, like any other creditor.

Art. 876

In case of insolvency of one of the coheirs or successors under universal title, his share of the mortgage debt must be divided pro rata between all the others.

Art. 877

Enforceable instruments against a deceased are equally enforceable against a heir personally; creditors, however, may seek enforcement only eight days after notice of those instruments has been served upon the heir personally or at his domicile.

Art. 878

They may request, in any case and against any creditor, separation of the deceased's patrimony from the heir's patrimony.

Art. 879

That right, however, may no longer be exercised where there is novation in the claim against the deceased, by acceptance of the heir as debtor.

Art. 880

It is time-barred, with regard to movables, after the lapse of three years.

With regard to immovables, an action may be brought as long as they are in the hands of the heir.

Art. 881

Creditors of an heir are not allowed to request the separation of the patrimonies against the creditors of the succession.

Art. 882

In order to prevent that partition be made in fraud of their rights, creditors of a coparcener may oppose its being made out of their presence; they have the right to intervene in it at their own expense; but they may not attack a partition achieved, unless, however, it was made without them and notwithstanding an objection they would have made.

Section IV - Of the Effects of Partition and of Warranty of Shares

Art. 883

(Act n° 76-1286 of 31 Dec. 1976)

Each coheir shall be deemed to have succeeded alone and immediately to all the effects comprised in his share, or falling to him through auction, and never to have had ownership of the other effects of the succession.

It shall be the same as to the property which came to him through any other act leading to the cessation of undivided ownership. One shall not distinguish depending on whether the act causes undivided ownership to cease in whole or in part, with regard only to some items of property or to some heirs.

However, transactions lawfully performed either under an agency given by the coheirs, or under a judicial authorization, maintain their effects whatever the allotment of the property which was the subject thereof may be at the time of the partition.

Art. 884

Coheirs remain respectively warrantors towards each other only for disturbances and dispossession which result from a cause previous to the partition.

The warranty may not arise where the kind of dispossession suffered was excepted by a specific and express clause of the instrument of partition; it ceases where a heir suffers dispossession by his own fault.

Art. 885

Each coheir is personally obliged in proportion to his hereditary share to indemnify his coheir for the loss which dispossession caused to him.

Where one of the coheirs is insolvent, the portion for which he is responsible must be equally divided between the warrantor and all the solvent coheirs.

Art. 886

The warranty of solvency of the debtor of an annuity may be enforced only within the five years following the partition. Warranty on account of insolvency does not arise where it happened only since the partition achieved.

Section V - Of Rescission in Matters of Partition

Art. 887

Partitions may be rescinded for reason of violence or deception.

There may also be occasion for rescission where one of the coheirs establishes, to his prejudice, loss amounting to more than one fourth. The mere omission of an article of the succession does not give rise to an action for rescission, but only to a supplement to the instrument of partition.

Art. 888

An action for partition is allowed against any act aiming at putting an end to an undivided ownership, between coheirs, whether it be characterized as a sale, exchange, settlement, or in any other manner.

But, after the partition, or the act which takes its place, an action for rescission is no longer admissible against a settlement made over the real difficulties which the first act presented, even though no suit has been initiated on that subject.

Art. 889

An action is not admitted against a sale of rights to succession made without fraud to one of the coheirs, at his own risk, by his other coheirs or one of them.

Art. 890

In order to decide whether there has been loss, the articles shall be appraised according to their value at the time of partition.

Art. 891

The defendant in a claim for rescission may stop the course of it and prevent a new partition by offering and delivering to the plaintiff the supplement of his hereditary share, either in money, or in kind.

Art. 892

A coheir who has transferred his share in whole or in part, is no longer entitled to bring an action for rescission on ground of deception or violence, where the transfer which he made is subsequent to the discovery of the deception, or to the ending of the violence.

TITLE II

OF GIFTS INTER VIVOS AND OF WILLS

CHAPTER I - GENERAL PROVISIONS

Art. 893

One may dispose of his property gratuitously only by gift inter vivos or by will, in the forms hereinafter laid down.

Art. 894

A gift inter vivos is a transaction by which the donor divests himself now and irrevocably of the thing donated, in favour of the donee who accepts it.

Art. 895

A will is a transaction by which a testator disposes, for the time when he is no longer alive, of the whole or part of his property, and which he may revoke.

Art. 896

Substitutions are prohibited .

Any disposition by which a donee, an heir appointed or a legatee, is assigned the duty to keep and return to a third party, is void, even with regard to the donee, the heir appointed or the legatee.

[repealed]

Art. 897

Are excepted from the first two paragraphs of the preceding Article the dispositions which the fathers and mothers and the brothers and sisters are allowed to make under Chapter VI of this Title.

Art. 898

A disposition by which a third party is called to take a gift, an inheritance or a legacy, in case a donee, an heir appointed or a legatee would not take it, shall not be considered as a substitution, and is valid .

Art. 899

It shall be the same as regards an inter vivos or testamentary disposition by which a usufruct is donated to one person and bare ownership to another .

Art. 900

In any inter vivos or testamentary disposition, the conditions which are impossible or those which are contrary to legislation or good morals, shall be deemed to be not written .

Art. 900-1

(Act n° 71-526 of 3 July 1971)

Clauses of inalienability concerning a property donated or bequeathed are valid only where they are temporary and justified by a serious and legitimate interest. Even in that case, a donee or legatee may be judicially authorized to dispose of the property if the interest which justified the clause has disappeared or if it happens that a more important interest so requires.

[repealed]

The provisions of this Article do not prejudice gratuitous transfers granted to juridical persons or even to natural persons responsible for forming juridical persons.

Art. 900-2

(Act n° 84-562 of 4 July 1984)

A beneficiary may apply for judicial revision of the conditions and charges encumbering the gifts or legacies which he has received, where, in consequence of a change of circumstances, performance of them has become for him extremely difficult, or seriously detrimental.

Art. 900-3

(Act n° 84-562 of 4 July 1984)

A claim for revision shall be brought as a main action; it may be so also as a counterclaim, in reply to an action for performance or revocation brought by the heirs of the disposing person.

It shall be brought against the heirs; it shall be brought at the same time against the Government procurator's office where there is doubt as to the existence or identity of some of them; where there is no known heir, it must be brought against the Government procurator's office.

The latter shall, in any case, have the case communicated to him.

Art. 900-4

(Act n° 84-562 of 4 July 1984)

A judge seized of a claim for revision may, according to the circumstances and even of his own motion, either reduce the quantity or intervals of the performances encumbering the gratuitous transfer, or modify their character making allowance for the intention of the disposing person, or even merge them with analogous performances resulting from other gratuitous transfers.

He may authorize the transfer of all or part of the property which is the subject matter of the gratuitous transfer with ordering that the proceeds thereof be used for purposes in keeping with the intention of the disposing party.

He shall prescribe measures adapted to maintain, as far as possible, the denomination which the disposing person intended to give to his gratuitous transfer.

Art. 900-5

(Act n° 84-562 of 4 July 1984)

A claim is admissible only ten years after the death of the disposing person or, in case of a succession of claims, ten years after the judgment which ordered the previous revision.

A beneficiary must justify the steps he took, during the interval, to perform his obligations.

Art. 900-6

(Act n° 84-562 of 4 July 1984)

Third party application for rehearing against a judgment acceding to an application for revision is admissible only in case of fraud chargeable to the donee or legatee.

The retraction or reformation of the judgment attacked does not give rise to any action against the third party purchaser in good faith.

Art. 900-7

(Act n° 84-562 of 4 July 1984)

Where, after revision, performance of the conditions or charges, such as it was originally provided, becomes possible again, it may be requested by the heirs.

Art. 900-8

(Act n° 84-562 of 4 July 1984)

Shall be deemed not written any clause by which a disposing party deprives of a gratuitous transfer a person who questions the validity of a clause of inalienability or requests authorization to transfer.

CHAPTER II - OF THE CAPACITY TO DISPOSE OR TO RECEIVE BY INTER VIVOS GIFT OR BY WILL

Art. 901

To make an inter vivos gift or a will one must be of sound mind.

Art. 902

All persons may dispose and receive, either by inter vivos gift, or by will, except those whom legislation declares to be incapable.

Art. 903

A minor under sixteen years of age may not in any way dispose, except for what is provided for in Chapter IX of this Title.

Art. 904

(Act n° 64-1230 of 14 Dec. 1964)

A minor who has reached the age of sixteen years and is not emancipated, may only dispose by will, and only to the extent of half of the property which legislation allows an adult to dispose of.

(Act of 28 Oct. 1916) Where, however, he is called up for a campaign of war, he may, during the duration of the hostilities, dispose of the same portion as if he were of full age, in

favour of any of his relatives, or of several of them up to the sixth degree inclusive or in favour of his surviving spouse.

Failing relatives of the sixth degree inclusive, a minor may dispose as a person of full age would do.

Art. 905 [repealed]

Art. 906

To be capable of receiving inter vivos, one need only to be conceived at the time of the gift.

To be capable of receiving by will, one need only to be conceived at the time of the death of the testator.

However, the gift or will may only take effect if the child is born viable.

Art. 907

A minor, although he has reached the age of sixteen, may not dispose to the benefit of his guardian, even by will.

(Act n° 64-1230 of 14 Dec. 1964) A minor, having become of age or emancipated, may not dispose, either by gift inter vivos or by will, to the benefit of the person who was his guardian, unless the final account of the guardianship has been previously rendered and audited.

In the above two cases, the ascendants of minors who are or who were their guardians are excepted.

Art. 908 and 908-1 [repealed]

Art. 908-2

(Act n° 72-3 of 3 Jan. 1972)

In inter vivos and testamentary dispositions, the phrases "sons and grandsons, children and grandchildren", without other addition or designation, refer to illegitimate descent as well as legitimate, unless the contrary results from the instrument or from circumstances.

Art. 909

Doctors in medicine or surgery, health officers and pharmacists who have treated a person during the disease of which he dies, may not benefit from the inter vivos or testamentary dispositions which he made in their favour during the course of that illness.

Are excepted :

1° Specific remunerative dispositions, with regard to the means of the disposing party and to the services rendered;

2° Universal dispositions, in the case of relationship up to the fourth degree inclusive, provided however the deceased has no heir in the direct line; unless the person in whose favour the disposition was made is himself one of those heirs.

The same rules shall apply to ministers of worship.

Art. 910

Dispositions inter vivos or by will to the benefit of almshouses, of the poor of a commune or of public-utility institutions may only take effect as they are authorized by decree.

Art. 911

Any disposition in favour of a person under a disability is void, whether it is disguised under the form of a contract for value, or is made under the names of intermediaries.

Are deemed intermediaries the father and mother, the children and descendants, and the spouse of the person under a disability.

Art. 912 [repealed]

CHAPTER III - OF THE DISPOSABLE PORTION OF PROPERTY AND OF ABATEMENT

Section I - Of the Disposable Portion of Property

Art. 913

(Act n° 72-3 of 3 Jan. 1972)

Gratuitous transfers, either by inter vivos acts or by wills, may not exceed half of the property of a disposing person, where he leaves only one child at his death; one-third, where he leaves two children; one-fourth, where he leaves three or a greater number; without there being occasion to discriminate between legitimate and illegitimate children [repealed].

Art. 913-1

(Act n° 72-3 of 3 Jan. 1972)

Are included in Article 913, under the name of children, descendants in whatever degree, although they must be counted only for the child whose place they take in the succession of the disposing party.

Art. 914

(Act n° 72-3 of 3 Jan. 1972)

Gratuitous transfers, either by inter vivos acts or by wills, may not exceed half of the property where, failing children, a deceased leaves one or several ascendants in each of the lines, paternal and maternal, and three-fourths where he leaves ascendants only in one line .

The property thus reserved for the benefit of ascendants is received by them in the order that the law calls them to succeed: they alone are entitled to that reserve in all cases where a partition concurrently with collaterals would not give them the portion of property assigned to it.

Art. 914-1

(Act n° 2001-1135 of 3 Dec. 2001)

Gratuitous transfers, either by inter vivos acts or by wills, may not exceed three-fourths of the property where, failing descendants and ascendants, a deceased leaves a surviving spouse, not divorced, against whom does not exist an order of judicial separation become res judicata and who is not a party to divorce or judicial separation proceedings.

Art. 915 to 915-2 [repealed]

Art. 916

"Failing descendants, ascendants or a surviving spouse, not divorced, against whom an order of judicial separation become res judicata does not exist and who is not a party to divorce or judicial separation proceedings" (Act n° 2001-1135 of 3 Dec. 2001), gratuitous transfers by inter vivos acts or by wills may exhaust the whole property.

Art. 917

Where a disposition by inter vivos act or by will is of a usufruct or of an annuity whose value exceeds the disposable portion, the heirs for whose benefit the law establishes a reserve have the option, either to perform that disposition or to waive ownership of the disposable portion.

Art. 918

The value in full ownership of property transferred, either on condition of paying a life annuity, or non-returnable, or with reservation of a usufruct, to one of the persons entitled to inherit in the direct line, shall be appropriated to the disposable portion; and the excess, if any, shall be collated to the mass. That appropriation and that collation may not be requested by those of the other persons entitled to inherit in the direct line who may have consented to those transfers, and, in no case, by persons entitled to inherit in the collateral line.

Art. 919

(Act of 24 March 1898)

The disposable portion may be donated in whole or in part, either by act inter vivos or by will, to the children or other persons entitled to inherit from the donor, without being subject to collation by the donee or legatee coming to the succession, provided that, as regards gifts, the disposition was made expressly over and above the share.

A declaration that a gift is over and above the share may be made, either in the instrument containing the disposition, or after, in the form of inter vivos or testamentary dispositions.

Section II - Of the Abatement of Gifts and Legacies

Art. 920

Dispositions either inter vivos or mortis causa, which exceed the disposable portion shall be abated to that portion at the time of the opening of the succession.

Art. 921

Abatement of dispositions inter vivos may be requested only by those for whose benefit the law makes a reserve, by their heirs or assigns: donees, legatees or creditors of a deceased may not request that abatement or benefit by it.

Art. 922

(Act n° 71-523 of 3 July 1971)

Abatement is determined by forming a mass of all the property existing at the death of the donor or testator.

One shall add fictitiously to it, after deducting the debts, that of which he has disposed by gift inter vivos according to its condition at the time of the gift and its value at the opening of the succession. Where property has been transferred, account shall be taken of its value at the time of transfer and, if there was substitution, of the value of the new property on the day of the opening of the succession.

One shall calculate on all that property, having regard to the kind of heirs whom he leaves, the portion which the deceased may have disposed of.

Art. 923

There shall never be occasion to abate gifts inter vivos, until the value of all the property included in the testamentary dispositions has been exhausted; and where there is occasion for that abatement it shall be done beginning with the last gift and so on, going back from the last to the oldest.

Art. 924

(Act n° 71-523 of 3 July 1971)

A compulsory heir favoured over and above his share beyond the disposable portion and who accepts the succession bears the abatement in value as is laid down in Article 866; up to his rights in the reserve, abatement shall be made by taking less.

He may claim all the articles bequeathed where the reducible portion does not exceed his share in the reserve.

Art. 925

Where the value of the inter vivos gifts exceeds or equals the disposable portion, all the testamentary dispositions lapse.

Art. 926

Where the testamentary dispositions exceed, either the disposable portion, or that part of the portion remaining after deduction of the value of the inter vivos gifts, abatement shall be made pro rata, without any distinction between universal legacies and specific legacies.

Art. 927

Nevertheless, in all cases where the testator expressly declared that he intends that a legacy be paid in preference to others, that preference must take place: and the legacy to which it applies shall be abated only where the value of the others does not complete the statutory reserve.

Art. 928

A donee shall return the fruits of what exceeds the disposable portion from the day of the death of the donor, where a claim for abatement was brought within the year; otherwise, from the day of the claim.

Art. 929

(Act n° 71-523 of 3 July 1971)

Rights in rem created by a donee are extinguished by the effect of abatement. Those rights, however, maintain their effects where the donor consented to them in the constitutive instrument or in a subsequent instrument. The donee is responsible for depreciation resulting from it.

Art. 930

An action for abatement or recovery may be brought by the heirs against third parties holding immovables which were part of gifts and were conveyed by the donees, in the same manner and in the same order as against the donees themselves, and after attachment or seizure and sale of their property. That action must be brought following the order of the dates of the conveyances, beginning by the most recent.

(Act n° 71-523 of 3 July 1971) Where a donor has consented to the transfer with the accord of all compulsory heirs born and alive at the time of it, an action may no longer be brought against a third party holder.

CHAPTER IV - OF INTER VIVOS GIFTS

Section I - Of the Form of Inter Vivos Gifts

Art. 931

All acts containing an inter vivos gift shall be executed before notaires, in the ordinary form of contracts; and there shall remain the original of them, on pain of annulment.

Art. 932

An inter vivos gift is binding upon the donor and produces effect only from the day when it is accepted in express terms.

Acceptance may be made during the lifetime of the donor, by a subsequent and authentic instrument of which the original shall remain; but then the gift has effect, with regard to the donor, only from the day when he has been given notice of the instrument which establishes that acceptance.

Art. 933

Where the donor is of full age, acceptance must be made by him or in his name, by a person having a power of attorney, containing authority to accept the gift made, or a general authority to accept all gifts which have or may have been made.

That power of attorney must be executed before notaires; and an office copy of it must be annexed to the original of the gift, or to the original of the acceptance , if made by a separate instrument.

Art. 934 [repealed]

Art. 935

A gift made to a non-emancipated minor or to an adult in guardianship must be accepted by his guardian, in accordance with Article 463, in the Title Of Minority, of Guardianship and of Emancipation .

[repealed]

(Act n° 64-1230 of 14 Dec. 1964) Nevertheless, the father and mother of a non-emancipated minor, or the other ascendants, even during the lifetime of the father and mother, although they are not guardians of the minor, may accept on his behalf.

Art. 936

A deaf and dumb person who knows how to write may accept by himself or through an agent.

Where he cannot write, acceptance must be made by a curator appointed for that purpose, according to the rules laid down in the Title Of Minority, of Guardianship and of Emancipation.

Art. 937

Gifts made to the benefit of almshouses, of the poor of a commune or of public-utility institutions must be accepted by the administrators of those communes or institutions, after they have been duly authorized.

Art. 938

A gift duly accepted is complete by the sole consent of the parties; and ownership of the articles donated is transferred to the donee without need of any other delivery.

Art. 939

(Ord. n° 59-71 of 7 Jan. 1959)

Where there is a gift of property capable of being mortgaged, registration of the instruments containing the gift and the acceptance, as well as the notice of acceptance, if it took place by separate instrument, must be made at the land registry in the arrondissement where the property is situated.

Art. 940

[repealed]

Where a gift is made to minors, to adults in guardianship, or to public institutions, registration shall be made at the suit of guardians, curators or administrators.

Art. 941

(Ord. n° 59-71 of 7 Jan. 1959)

Failure to have the registration made may be set up by all interested persons, except, however, those who are responsible for having the registration made, or their assigns, and the donor.

Art. 942

(Act n° 85-1372 of 23 Dec. 1985)

Minors and adults in guardianship shall not be reinstated in case of failure to accept or register the gifts; subject to their remedy against their guardians, if there is occasion, and without reinstatement taking place, even where the guardians are insolvent.

Art. 943

An inter vivos gift may only include the existing property of the donor; where it includes property to come, it is void in this regard.

Art. 944

Any inter vivos gift made subject to conditions whose performance depends on the sole intention of the donor, is void.

Art. 945

It is likewise void where it was made under the condition of paying debts or liability other than those which existed at the time of the gift, or which are expressed either in the instrument of gift, or in a statement which should be annexed thereto.

Art. 946

In the case where the donor has reserved to himself the freedom to dispose of an article included in the gift, or of a fixed sum out of the property donated, if he dies without having disposed of them, the said article or sum shall belong to the donor's heirs, notwithstanding all clauses and stipulations to the contrary.

Art. 947

The four preceding Articles shall not apply to the gifts mentioned in Chapters VIII and IX of this Title.

Art. 948

Any act of gift of movable effects is valid only as to the effects of which a statement of appraisal, signed by the donor and the donee, or by those who accept for the latter, is annexed to the original of the gift.

Art. 949

A donor is allowed to reserve for his benefit or to dispose for the benefit of another, of the enjoyment or the usufruct of the movable or immovable property donated.

Art. 950

Where a gift of movable effects is made with reservation of usufruct, the donee is obliged, at the expiry of the usufruct, to take the effects donated which are in kind, in the condition in which they are; and he has an action against the donor or his heirs on account of the articles which do not exist, up to the amount of the value which was given to them in the statement of appraisal.

Art. 951

A donor may stipulate a right of reversion of the items donated, either for the case of the predecease of the donee alone, or for the case of the predecease of the donee and of his descendants;

That right may be stipulated only for the benefit of the donor alone .

Art. 952

The effect of the right of reversion is to rescind all conveyances of the immovable property donated, and to make the property revert to the donor, free and unencumbered by any liabilities and mortgages, except, however, the mortgage of dowry and of ante-nuptial agreements, where the other property of the donor spouse is not sufficient and only in the case where the gift was made by the same ante-nuptial agreement from which those rights and mortgages result .

Section II - Of Exceptions to the Rule of Irrevocability of Inter Vivos Gifts

Art. 953

An inter vivos gift may be revoked only for non-performance of the conditions under which it was made, on account of ingratitude, and on account of unforeseen birth of children.

Art. 954

In the case of revocation for non-performance of the conditions, the property shall revert to the hands of the donor free of all charges and mortgages granted by the donee: and the donor shall have the same rights against third parties holding the immovables donated as he would have against the donee himself.

Art. 955

An inter vivos gift may be revoked on account of ingratitude only in the following cases:

1° Where the donee has made an attempt against the life of the donor;

2° Where he has been guilty of cruelty, serious offences or grievous insults against him;

3° Where he refuses maintenance to him.

Art. 956

Revocation on account of non-performance of conditions or of ingratitude may never take place by operation of law.

Art. 957

A claim for revocation on account of ingratitude must be brought within the year, from the day of the offence with which the donee is charged by the donor, or from the day when the offence could have been known by the donor.

That revocation may not be applied for by the donor against the heirs of the donee, or by the heirs of the donor against the donee, unless, in the latter case, the action has been initiated by the donor, or he has died within a year after the offence.

Art. 958

(Ord. n° 59-71 of 7 Jan. 1959)

A revocation on account of ingratitude may not prejudice transfers made by a donee, or mortgages and other real encumbrances with which he may have burdened the subject matter of the gift, provided they all are previous to the registration of the claim for revocation at the land registry of the place of the property .

In case of revocation, the donee shall be ordered to return the value of the articles transferred, with regard to the time of the claim, and the fruits, from the day of that claim.

Art. 959

Gifts in favour of marriage may not be revoked on account of ingratitude.

Art. 960

All inter vivos gifts made by persons who had no children or descendants presently living at the time of the gift, of whatever value they may be, and for whatever reason they may have

been made, and although they were reciprocal or remunerative, even those made in favour of marriage by persons other than the ascendants to the spouses, or by the spouses to each other, are revoked by operation of law by the unforeseen birth of a legitimate child of the donor, even posthumous, or by legitimation by subsequent marriage of an illegitimate child, where he was born after the gift.

Art. 961

That revocation shall take place, although the child of the donor was conceived at the time of the gift.

Art. 962

A gift is likewise revoked even if the donee has taken possession of the property donated and the latter has been left with him by the donor after the birth of the child; without, however, the donee being obliged to return the fruits collected by him, of whatever nature they may be, before the day when notice of the birth of the child or of his legitimation by subsequent marriage was served on him by process or other instrument in due form; and even where the claim for recovering the property donated was brought only after that notice.

Art. 963

Property included in a gift revoked by operation of law, shall revert to the patrimony of the donor free from all encumbrances and mortgages granted by the donee, without there being appropriated, even subsidiarily, to the restitution of the dowry of the wife of that donee, to her recoveries or other ante-nuptial agreements; and that shall take place even though the gift was made in favour of the marriage of the donee and included in the agreement, and the donor has bound himself as surety, through the gift, for the performance of the ante-nuptial agreement.

Art. 964

Gifts revoked in this way may not be revived or resume their effect, either by the death of the donor's child, or by any confirmatory instrument; and where the donor wishes to donate the same property to the same donee, either before or after the death of the child through whose birth the gift was revoked, he may do so only by a new disposition.

Art. 965

Any clause or agreement by which a donor renounces the revocation of a gift on account of unforeseen birth of a child, shall be considered as void and may not produce any effect .

Art. 966

A donee, his heirs or assigns, or others detaining things donated, may set up prescription to assert a gift revoked by the unforeseen birth of a child only after a possession of thirty years, which may start running only from the day of the birth of the latest child of the donor, even posthumous; and without prejudice to interruptions, as provided by law.

CHAPTER V - OF TESTAMENTARY DISPOSITIONS

Section I - Of General Rules on the Form of Wills

Art. 967

Any person may dispose by will, either under the name of appointment of an heir, or under the name of legacy, or under any other denomination suitable for expressing his wish.

Art. 968

A will may not be made in the same instrument by two or several persons, either for the benefit of a third person, or as a mutual and reciprocal disposition.

Art. 969

A will may be holographic, or made by a public instrument, or in the secret form.

Art. 970

An holographic will is not valid unless it is entirely written, dated and signed by the hand of the testator: it is not subject to any other form.

Art. 971

(Act n° 50-1513 of 8 Dec. 1950)

A will by public instrument shall be received by two notaires or by one notaire attended by two witnesses.

Art. 972

(Act n° 50-1513 of 8 Dec. 1950)

Where a will is received by two notaires, it shall be dictated to them by the testator; one of those notaires shall write it himself or shall have it written by hand or mechanically.

Where there is only one notaire, it must also be dictated by the testator; the notaire shall write it himself or shall have it written by hand or mechanically.

In either case, it must be read over to the testator.

All of which shall be expressly mentioned.

Art. 973

(Act n° 50-1513 of 8 Dec. 1950)

That will must be signed by the testator in the presence of the witnesses and of the notaire; where the testator declares that he does not know how to sign or is unable to do so, his declaration shall be expressly mentioned in the instrument, as well as the cause which prevents him from signing.

Art. 974

(Act n° 50-1513 of 8 Dec. 1950)

The will must be signed by the witnesses and by the notaire .

Art. 975

Legatees, in whatever class they may be, their relatives by blood or marriage up to the fourth degree inclusive, or clerks of the notaires by whom the instruments are received, may not be taken as witnesses of a will by public instrument.

Art. 976

(Act n° 50-1513 of 8 Dec. 1950)

Where a testator wishes to make a secret will, the paper which contains the dispositions or the paper used as an envelope, if there is one, shall be closed, stamped and sealed up.

The testator shall present it thus closed, stamped and sealed up to the notaire and to two witnesses, or he will have it closed, stamped and sealed up in their presence and he shall declare that the contents of that paper is his will, signed by him, and written by him or by another, while affirming in that latter case, that he has personally verified its contents; he shall indicate, in all cases, the mode of writing used (by hand or mechanical).

The notary shall draw up, in original not recorded, an instrument of superscription which he shall write or have written by hand or mechanically on that paper, or on the sheet used as an envelop and bearing the date and indication of the place where it was done, a description of the

cover and of the print of the seal, and mention of all the above-mentioned formalities; that instrument shall be signed by the testator as well as by the notaire and the witnesses.

All that is mentioned above shall be done without interruption and without attending to other instruments.

In case the testator cannot sign the instrument of superscription owing to an impediment arisen since the signature of the will, mention shall be made of the declaration which he makes of it and of the reason he gives for it.

Art. 977

(Act n° 50-1513 of 8 Dec. 1950)

Where the testator does not know how to sign or was unable to do so when he had his dispositions written, one shall proceed as laid down in the preceding Article; in addition, there shall be mentioned on the instrument of superscription that the testator declared that he did not know how to sign or was unable to do so when he had his dispositions written.

Art. 978

Those who do not know how or are unable to read, may not make dispositions in the form of a secret will.

Art. 979

(Act n° 50-1513 of 8 Dec. 1950)

In case the testator is unable to speak, but can write, he may make a secret will, subject to the express condition that the will be signed by him and written by him or another, that he present it to the notaire and to the witnesses and that he write at the top of the instrument of superscription, in their presence, that the paper he presents is his will and sign. Mention shall be made in the instrument of superscription that the testator has written and signed those words in the presence of the notaire and of the witnesses and, furthermore, all which is prescribed by Article 976 and is not inconsistent with this Article shall be complied with.

In all cases provided for in this Article and in the preceding Articles, a secret will in which the statutory formalities were not complied with and which is void as such, is valid however as a holographic will, where all the requisites for its validity as holographic will are fulfilled, even if it was named a secret will.

Art. 980

(Act n° 50-1513 of 8 Dec. 1950)

Witnesses called to take part in wills must be French and of full age, know how to sign and have the enjoyment of their civil rights . They may be of either sex but a husband and his wife may not be witnesses to the same instrument.

Section II - Of Particular Rules on the Form of Certain Wills

Art. 981

(Act of 17 May 1900)

Wills of soldiers, of sailors of the State and of persons employed with the armies may be received in the cases and on the terms provided for in Article 93, either by a superior officer or military doctor of a corresponding rank, in the presence of two witnesses; or by two officials of the Quartermaster Department or two officers of the commissariat; or by one of those officials or officers in the presence of two witnesses; or finally, in an isolated detachment, by the officer commanding the detachment, with the assistance of two witnesses, where it does not exist in the detachment a superior officer or military doctor of a corresponding rank, an official of the Quartermaster Department or an officer of the commissariat.

The will of the officer commanding an isolated detachment may be received by the officer coming after him in order of duty.

The right to make a will in the way provided for in this Article shall extend to prisoners in the hands of the enemy.

Art. 982

(Act of 17 May 1900)

Wills mentioned in the preceding Article may also, where the testator is ill or wounded, be received in hospitals or military medical units such as defined by military regulations, by the senior surgeon, whatever his rank may be, with the assistance of the managing administration officer.

Failing that administration officer, the presence of two witnesses is necessary.

Art. 983

(Act of 8 June 1893)

In all cases, an original in duplicate of the wills mentioned in the two preceding Articles shall be made.

Where this formality could not be fulfilled because of the state of health of the testator, an office copy of the will shall be drawn up to take the place of the second original; that office copy shall be signed by the witnesses and by the instrumentary officers. Mention shall be made therein of the reasons which prevented the second original from being drawn up.

As soon as communications are possible and within the shortest time, the two originals or the original and the office copy of the will shall be addressed separately and by different mails, under closed and sealed cover, to the Minister of War or of the Navy, to be filed with the notaire indicated by the testator or, failing an indication, with the president of the chamber of notaires of the arrondissement of the last domicile.

Art. 984

(Act of 8 June 1893)

A will made in the manner established above is void six months after the testator has come to a place where he is at liberty to use the ordinary forms, unless, before the expiry of that period, he is again placed in one of the special situations provided for in Article 93. The will is then valid during that special situation and during a new period of six months after its expiry.

Art. 985

Wills made in a place with which all communication is interrupted because of the plague or other contagious disease, may be made before the judge of the tribunal d'instance or before one of the municipal officials of the commune, in the presence of two witnesses.

(Act of 28 July 1915) This provision shall apply to those suffering from those diseases, as well to those who are in the contaminated places, although they are not presently ill.

Art. 986

(Act of 28 July 1915)

Wills made in an island of the European territory of France, where there exists no office of notaire, when there is an impossibility of communicating with the continent, may be received as is laid down in the preceding Article. The impossibility of communicating must be certified in the instrument by the judge of the tribunal d'instance or the municipal official who received the will.

Art. 987

The wills mentioned in the two preceding Articles become void six months after communications have been re-established in the place where the testator is, or six months after he has gone to a place where they are not interrupted.

Art. 988

(Act of 8 June 1893)

In the course of a sea voyage, either on the way or during a stoppage in port, where it is impossible to communicate with land, or where it does not exist in the port, if it is in a foreign country, a French diplomatic or consular agent vested with the functions of a notaire, wills of

persons present on board shall be received, in the presence of two witnesses: on ships of the State, by the administration officer or, in his absence, by the captain or one who fulfils his functions; and on other ships by the captain, master or skipper, with the assistance of the chief officer, or, in their absence, by those who fulfil their functions.

The instrument shall indicate that of the above provided circumstances in which it was received.

Art. 989

(Act of 8 June 1893)

On ships of the state, under the circumstances provided for in the preceding Article, the will of the administration officer shall be received by the captain or by one who fulfils his functions and, where there is no administration officer, the will of the captain shall be received by the one coming after him in order of duty.

On other ships, the will of the captain, master or skipper, or that of the chief officer, shall, under the same circumstances, be received by the persons who come after them in order of duty.

Art. 990

(Act of 8 June 1893)

In all cases, an original in duplicate of the wills mentioned in the two preceding Articles shall be made.

Where that formality could not be fulfilled because of the state of health of the testator, an office copy of the will shall be drawn up to take the place of the second original; that office copy shall be signed by the witnesses and by the instrumentary officers. Mention shall be made of the reasons which prevented the second original from being drawn up .

Art. 991

(Act of 8 June 1893)

At the first stoppage in a foreign port where there is a French diplomatic or consular agent , one of the originals or the office copy of the will shall be delivered, under closed and sealed cover, into the hands of that official, who shall forward it to the Minister of the Navy, in order that it may be deposited as is stated in Article 983.

Art. 992

(Act of 8 June 1893)

Upon the arrival of the ship in a French port, the two originals of the will, or the original and its office copy, or the original which remains, in case of transmission or delivery effected during the course of the voyage, shall be deposited, under closed and sealed cover, for the ships of the State, at the office of commissioning, and for other ships, at the office of seamen's registration. Each of those documents shall be addressed separately and by different mails, to the Minister of the Navy, who shall forward them as is stated in Article 983.

Art. 993

(Act of 8 June 1893)

On the list of the crew, in regard to the name of the testator, mention shall be made of the delivery of the originals or office copy of the will made to the consulate, to the office of commissioning or to the office of seamen's registration, in accordance with the prescriptions of the preceding Articles.

Art. 994

(Act of 8 June 1893)

A will made during the course of a sea voyage, in the form prescribed in Articles 988 and following, is valid only where the testator dies on board or within six months after landing in a place where he could have redone it in the ordinary forms.

However, where the testator undertakes a new sea voyage before expiry of that period, the will is valid during the duration of that voyage and during a new period of six months after the testator has disembarked again.

Art. 995

(Act of 8 June 1893)

Dispositions inserted in a will made, in the course of a sea voyage, to the benefit of the officers of the ship other that those who are relatives by blood or marriage of the testator, are null and void.

It shall be the same, whether the will is made in the holographic form or received in accordance with Articles 988 and following.

Art. 996

(Act of 8 June 1893)

A reading shall be given to the testator, in the presence of the witnesses, of the provisions of Articles 984, 987 or 994, as the case may be, and mention of that reading shall be mentioned in the will .

Art. 997

(Act of 8 June 1893)

The wills included in the above Articles of this Section shall be signed by the testator, by those who have received them and by the witnesses.

Art. 998

(Act of 8 June 1893)

Where a testator declares that he is unable or does not know how to sign, mention shall be made of his declaration, as well as of the reason which prevents him from signing.

In the case where the presence of two witnesses is required, the will shall be signed by one of them at least, and mention shall be made of the reason why the other did not sign.

Art. 999

A French person who is in a foreign country may make his testamentary dispositions by instrument under private signature, as is prescribed in Article 970, or by authentic instrument, in the forms in use in the place where the instrument is made.

Art. 1000

Wills made in a foreign country may be enforced on property situated in France only after they have been registered at the office of the domicile of the testator, where he has kept one, otherwise, at the office of his last known domicile in France; and in the case the will contains dispositions of immovables there situated, it shall be also registered at the registry of the situation of those immovables, without a double tax being charged .

Art. 1001

The formalities to which the various wills are subject under the provisions of this Section and the preceding one shall be complied with on pain of annulment.

Section III - Of the Appointments of Heirs and of Legacies in general

Art. 1002

Testamentary dispositions are either universal, or by universal title, or specific.

Each of those dispositions, whether made under the designation of appointment of an heir, or made under the designation of legacy, produces its effect according to the rules hereafter laid down for universal legacies, for legacies by universal title, or for specific legacies.

Section IV - Of Universal Legacies

Art. 1003

A universal legacy is a testamentary disposition by which a testator donates to one or more persons the entirety of the property which he may leave at his death.

Art. 1004

Where, at the death of a testator, there are heirs to whom a portion of his property is reserved by law, those heirs are seized by operation of law, by the death, of all the property of the succession; and a universal legatee is compelled to request of them the delivery of the property included in the will.

Art. 1005

However, in the same cases, a universal legatee has the enjoyment of the property included in the will from the day of the death, where a claim for delivery was brought within one year after that time; otherwise, that enjoyment shall only commence from the day of a claim brought in court, or from the day when delivery was voluntarily agreed to.

Art. 1006

Where at the death of a testator there are no heirs to whom a portion of the property is reserved by law, a universal legatee is seized by operation of law by the death of the testator, without being compelled to request delivery.

Art. 1007

(Act n° 66-1012 of 28 Dec. 1966)

Before it produces its effects, an holographic or secret will shall be deposited in the hands of a notaire. The will shall be opened where it is sealed . The notaire shall draw up at once a memorandum of the opening and of the condition of the will, while specifying the circumstances of the deposit. The will as well as the memorandum shall take their place among the original records of the notaire.

Within the month following the date of the memorandum, the notaire shall address an office copy of it and a facsimile of the will to the chief clerk of the tribunal d'instance of the place of opening of the succession, who shall acknowledge receipt of those documents and shall place them among his original records.

Art. 1008

In the case of Article 1006, where the will is holographic or secret, a universal legatee is bound to apply to be vested with possession, by an order of the president, written at the foot of a petition, to which the instrument of deposit shall be joined.

Art. 1009

A universal legatee who competes with an heir to whom the law reserves a portion of the property, is liable for the debts and charges of the succession of the testator, personally to the extent of his share and portion, and as to mortgages to the extent of the whole; and he is responsible for paying all the legacies, except in case of abatement, as is stated in Articles 926 and 927.

Section V - Of Legacies by Universal Title

Art. 1010

A legacy by universal title is one by which the testator bequeaths a portion of the property of which the law permits him to dispose, such as a half, a third, or all his immovables, or all his movables, or a fixed portion of all his immovables or of all his movables.

Any other legacy constitutes only a specific disposition.

Art. 1011

Legatees by universal title are obliged to request delivery from the heirs to whom a portion of property is reserved by law; and, failing them, from the heirs called in the order established by the Title Of Successions.

Art. 1012

A legatee by universal title is liable, like a universal legatee, for the debts and charges of the succession of the testator, personally to the extent of his share and portion, and as to mortgages to the extent of the whole.

Art. 1013

Where a testator has disposed of only a part of the disposable portion, and has done so by universal title, that legatee is responsible for paying the specific legacies pro rata with the natural heirs.

Section VI - Of Specific Legacies

Art. 1014

An outright legacy gives to the legatee, from the day of the death of the testator, a right to the thing bequeathed, which right may be transmitted to his heirs or assigns.

Nevertheless, a specific legatee may be vested with the possession of the thing bequeathed, or claim the fruits or interests of it only from the day of his claim for delivery, made following the order established by Article 1011, or from the day when delivery was voluntarily granted to him.

Art. 1015

Interests or fruits of a thing bequeathed accrue to the legatee, from the day of the death, and without a claim having been brought by him in court:

1° Where the testator has expressly expressed his wish in this regard in the will;

2° Where an annuity or a pension has been bequeathed as a maintenance.

Art. 1016

The costs of a claim for delivery shall be charged to the succession, without however a reduction of the statutory reserve resulting from it.

Recording fees are due by the legatee.

All of which, unless otherwise directed by the will.

Each legacy may be registered separately, without that registration benefiting to anyone other than the legatee or his assigns.

Art. 1017

The heirs of the testator, or other debtors for a legacy, are personally liable for its payment, each one pro rata of the share and portion by which he benefits in the succession.

They are responsible as to mortgages for the whole, up to the amount of the value of the immovables of the succession which they may hold.

Art. 1018

The thing bequeathed shall be delivered with its necessary accessories, and in the condition in which it stands on the day of the death of the donor.

Art. 1019

Where a person who bequeathed ownership of an immovable, has increased it thereafter by acquisitions, those acquisitions, even if contiguous, shall not be deemed to form a part of the legacy, failing a new disposition.

It may not be so of improvements or of new constructions made on the tenement bequeathed, or of an enclosure whose space the testator has increased.

Art. 1020

Where, before the will or afterwards, a thing bequeathed has been mortgaged for a debt of the succession, or even for the debt of a third person, or where it is burdened with a usufruct, the one who is obliged to pay the legacy is not bound to disencumber the thing, unless he has been directed to do so by an express provision of the testator.

Art. 1021

Where a testator has bequeathed a thing belonging to others, the legacy is void, whether the testator knew or not that the thing did not belong to him.

Art. 1022

Where a legacy is of an undetermined thing, the heir are not obliged to give it of the best quality, and he may not offer it of the worst.

Art. 1023

A legacy made to a creditor, may not be deemed a set-off against his claim, nor a legacy made to a servant a set-off against his wages.

Art. 1024

A specific legatee is not liable for the debts of the succession, subject to the abatement of the legacy, as above stated, and subject to a foreclosure action by creditors.

Section VII - Of Testamentary Executors

Art. 1025

A testator may appoint one or several testamentary executors.

Art. 1026

He may vest them in possession of the whole or only of part of his movables; but vesting may not last for more than one year and one day after his death.

Where he did not grant it to them, they may not demand it.

Art. 1027

An heir may cause vesting to cease by offering to deliver to the testamentary executors a sum sufficient to pay the legacies of movables, or by justifying that payment.

Art. 1028

A person who may not bind himself may not be a testamentary executor.

Art. 1029 [repealed]

Art. 1030

A minor may not be a testamentary executor, even with the authorization of his guardian [or curator, repealed by implication].

Art. 1031

Testamentary executors shall have seals affixed, where some of the heirs are minors, adults in guardianship or absentees.

They shall have an inventory made of the property of the succession, in the presence of the presumptive heir, or he having been duly summoned.

They shall induce the sale of movables, if there is insufficient money to pay the legacies.

They shall take care that the will is carried out; and, in case of controversy as to its carrying out, they may intervene to support its validity.

They shall account for their management on the expiry of the year from the death of the testator.

Art. 1032

The powers of a testamentary executor may not pass to his heirs.

Art. 1033

Where there are several testamentary executors who have accepted, one alone may act in default of the others; and they are jointly and severally liable for the account of the movables which was entrusted to them, unless the testator has divided their duties and each of them has confined himself to those which were assigned to him.

Art. 1034

Expenses incurred by a testamentary executor for affixing seals, for the inventory, the account and other expenses relating to his duties, shall be charged to the succession.

Section VIII - Of the Revocation of Wills and of their Lapse

Art. 1035

Wills may only be revoked, in whole or in part, by a subsequent will, or by an instrument before notaires, containing the declaration of a change of intention.

Art. 1036

Subsequent wills which do not revoke previous ones in an express manner annul only those of the dispositions therein contained which are inconsistent with the new ones, or which are contrary to them.

Art. 1037

A revocation made in a subsequent will produces its full effect, even though the new will is not carried out through a disability of the heir appointed or the legatee, or their refusal to take it.

Art. 1038

Any transfer made by the testator of all or part of the thing bequeathed, even by a sale with option of redemption or by exchange, involves revocation of the legacy as to everything that was transferred, even though the subsequent transfer is void and the thing has returned to the hands of the testator.

Art. 1039

Any testamentary disposition lapses where the one in whose favour it was made does not survive the testator.

Art. 1040

Any testamentary disposition made under a condition depending upon an uncertain event, and such that, in the intention of the testator, that disposition is to be carried out only where the event happens or does not happen, lapses if the appointed heir or the legatee dies before the condition is fulfilled.

Art. 1041

A condition which, in the intention of the testator, only suspends the carrying out of the disposition, does not prevent the appointed heir or the legatee from having a vested right transmissible to his heirs.

Art. 1042

A legacy lapses, where the thing bequeathed totally perishes in the lifetime of the testator.

It shall be likewise where it perishes after his death, without the act or fault of the heir, although the latter may have been on notice to deliver it, if it would likewise have perished in the hands of the legatee.

Art. 1043

A testamentary disposition lapses where the appointed heir or the legatee repudiates it or is incompetent to take it .

Art. 1044

There shall be occasion for accruer to the benefit of the legatees, in the case where a legacy is made jointly to several of them.

A legacy shall be deemed jointly made where it is made by one and the same disposition and where the testator did not assign the share of each of the co-legatees in the thing bequeathed.

Art. 1045

It shall likewise be deemed jointly made when a thing which is not susceptible of being divided without deterioration is donated by the same will to several persons, even separately.

Art. 1046

The same causes which, according Article 954 and the first two provisions of Article 955, allow a claim for revocation of an inter vivos gift, shall justify a claim for revocation of testamentary dispositions.

Art. 1047

Where that claim is based upon a grievous insult against the memory of the testator, it must be brought within one year after the day of the offence.

CHAPTER VI - OF DISPOSITIONS ALLOWED IN FAVOUR OF THE GRANDCHILDREN OF A DONOR OR TESTATOR OR OF THE CHILDREN OF HIS BROTHERS AND SISTERS

Art. 1048

Property of which the father and mother may dispose, may be donated by them, in whole or in part, to one or several of their children by inter vivos or testamentary act, with the obligation of returning that property to the children born and to be born, in the first degree only, of said donees.

Art. 1049

Is valid, in case of death without children, a disposition which a deceased made by inter vivos or testamentary act for the benefit of one or several of his brothers or sisters, of all or part of the property which is not reserved by law in his succession, with the obligation of returning that property to the children born and to be born, in the first degree only, of said donee brothers or sisters.

Art. 1050

The dispositions allowed by the two preceding Articles are valid only where the obligation to return is for the benefit of all the children born and to be born of the institute, without exception or preference by reason of age or sex.

Art. 1051

Where, in the above cases, an institute subject to restitution for the benefit of his children dies, leaving children in the first degree and descendants of a pre-deceased child, the latter shall take the portion of the pre-deceased child, by representation.

Art. 1052

Where a child, brother or sister to whom property was donated by an inter vivos act, without obligation of restitution, accepts a new gratuitous transfer made by an inter vivos or testamentary act, subject to the condition that the property previously donated be burdened with that obligation, they are no longer allowed to divide the two dispositions made for their benefit and to renounce the second to be satisfied with the first, even if they offer to return the property included in the second gift.

Art. 1053

The rights of the substitutes take effect from the time when, for whatever reason, the enjoyment of the child, the brother or the sister institutes comes to an end: an anticipated waiver of the enjoyment for the benefit of the institutes may not prejudice creditors of the institute antecedent to the waiver.

Art. 1054 [repealed by implication]

Art. 1055

(Act n° 64-1230 of 14 Dec. 1964)

A person who makes the dispositions allowed by the preceding Articles may, by the same act, or by a subsequent act, in authentic form, appoint a guardian in charge of the execution of those dispositions: that guardian may be dispensed only for one of the causes expressed in Articles 428 and following.

Art. 1056

Failing such guardian, one shall be named at the suit of the institute or of his guardian where he is a minor, within a period of one month after the day of the death of the donor or testator, or after the day when, since that death, the act containing the disposition has become known.

Art. 1057

An institute who did not comply with the preceding Article loses the benefit of the disposition; and, in that case, the right may be declared to be vested in the substitutes, at the suit either of the substitutes where they are of full age, or of their guardian or curator, where they are minors or adults in guardianship, or of any relative of the substitutes of full age, minors or adults in guardianship, or even ex officio, at the suit of the Government procurator of the tribunal de grande instance of the place where the succession was opened.

Art. 1058

After the death of the person who has disposed with an obligation of restitution, there shall be made, in the ordinary forms, an inventory of all the property and effects composing the succession, except, nevertheless, in case of a specific legacy. That inventory shall include an appraisal at a fair price of the movables and movable effects.

Art. 1059

It shall be done at the request of the institute and within the period fixed in the Title Of Successions, in the presence of the guardian appointed for the execution. The expenses shall be taken from the property included in the succession.

Art. 1060

Where an inventory was not made on request of the institute within the above period, it shall be done within the following month at the suit of the guardian appointed for the execution, in the presence of the institute or of his guardian.

Art. 1061

Where the two preceding Articles have not been complied with, the same inventory shall be done, at the suit of the persons designated in Article 1057, the institute or his guardian and the guardian appointed for the execution being summoned.

Art. 1062

The institute shall have a sale passed on to, by bills and auctions, of all the movables and effects included in the disposition, with the exception nevertheless of those mentioned in the two following Articles.

Art. 1063

The furniture and other movable things which are included in the disposition under the express condition of keeping them in kind, shall be returned in the condition in which they are at the time of the restitution.

Art. 1064

Cattle and implements used to exploit lands shall be deemed included in the donations inter vivos or testamentary of said lands; and the institute is bound only to have them appraised and evaluated, in order to return a like value at the time of the restitution.

Art. 1065

Within a period of six months after the day of the closing of the inventory, an institute shall invest the ready money, the funds coming from the proceeds of the movables and effects which have been sold, and what is received from bills receivable.

That period may be extended if there is occasion.

Art. 1066

An institute is likewise bound to invest the funds coming from bills receivable which are recovered and from redemptions of annuities; and this, within three months at the latest after he has received them.

Art. 1067

That investment shall be made in accordance with the directions of the maker of the disposition, where he designated the nature of the property in which the investment must be made; otherwise, it may be made only in immovables or with a prior charge on immovables.

Art. 1068

The investment prescribed by the preceding Articles shall be made in the presence and at the suit of the guardian appointed for the execution.

Art. 1069

(Ord. n° 59-71 of 7 Jan. 1959)

Dispositions by inter vivos or testamentary acts, with an obligation of restitution, shall, at the suit either of the institute or of the guardian appointed for the execution, be registered, as to immovables in accordance with the statutes and regulations relating to land registration, and as to preferential or mortgaged claims following the prescriptions of Articles 2148 and 2149, paragraph 2, of this Code.

Art. 1070

Lack of "registration" (Ord. n° 59-71 of 7 Jan. 1959) of an instrument containing a disposition may be set up by creditors and third parties purchasers, even against minors or adults in guardianship, subject to the remedy against the institute and the guardian for the execution, and without the minors or adults in guardianship being reinstated against that lack of "registration" (Ord. n° 59-71 of 7 Jan. 1959), even where the institute and the guardian are insolvent.

Art. 1071

Lack of "registration" (Ord. n° 59-71 of 7 Jan. 1959) may not be made good or considered as remedied by knowledge which the creditors or third parties purchasers may have had of the disposition in other ways than by the "registration" (Ord. n° 59-71 of 7 Jan. 1959).

Art. 1072

Donees, legatees, and even the [deleted] heirs of the person who made the disposition, and likewise their donees, legatees or heirs may not, in any event, set up against the substitutes the lack of "registration" (Ord. n° 59-71 of 7 Jan. 1959) or of recording.

Art. 1073

A guardian appointed for the execution is personally liable, where he has not, in every way, complied with the rules hereabove laid down for establishing the property, for the sale of movables, for the investment of the funds, for the registration and recording and, in general, where he has not taken all the necessary steps so that the obligation of restitution be well and faithfully fulfilled.

Art. 1074

Where the institute is a minor, he may not, even in case of insolvency of his guardian, be reinstated against non-compliance with the rules prescribed by the Articles of this Chapter.

CHAPTER VII - OF PARTITIONS MADE BY ASCENDANTS

(Act n° 71-523 of 3 July 1971)

Art. 1075

The father and mother and other ascendants may make a distribution and partition of their property between their children and descendants.

That act may be made under the form of a partition made by gift or of a partition made by will. It shall comply with the formalities, requisites and rules prescribed for inter vivos gifts in the first case, and for wills in the second, subject to the application of the provisions which follow.

(Act n° 88-15 of 5 Jan. 1988) Where their property includes an individual concern of an industrial, commercial, craft, agricultural or professional character, the father and mother and other ascendants may, under the same conditions and with the same effects, distribute and

partition them between their children and descendants and other persons under the form of a partition made by gift, provided the tangible and intangible property allocated for the exploiting of the concern is part of that distribution and that partition, and that distribution and that partition have the effect of assigning to those other persons only the ownership of all or part of that property or its enjoyment.

Art. 1075-1

A partition made by an ascendant may not be attacked for reason of loss.

Art. 1075-2

The provisions of Article 833-1, paragraph 1, shall apply to balances which are the responsibility of donees, notwithstanding any agreement to the contrary.

Art. 1075-3

Where the whole of the property which an ascendant leaves on the day of his or her death has not been included in the partition, that item of his or her property which has not been included shall be assigned or partitioned in accordance with the law.

Section I - Of Partitions Made by Gifts

Art. 1076

A partition made by gift may have as its subject matter only existing property.

A gift and a partition may be made by separate acts, provided the ascendant is a party to both acts.

Art. 1077

Property received by descendants as an anticipated partition constitutes an advancement of their portions of reserve, unless it was donated expressly over and above their shares.

Art. 1077-1

A descendant who did not participate in a partition made by gift or who received a part below his portion of the reserve may bring an action for abatement where there does not exist at the opening of the succession property not included in the partition and sufficient to form or make his reserve complete, account being taken of the gratuitous transfers by which he may have profited.

Art. 1077-2

Partitions made by gifts shall follow the rules of inter vivos gifts for all which regards appropriation, calculation of the reserve and abatement.

An action for abatement may be brought only after the death of the ascendant who made the partition or of the survivor of the ascendants in case of joint partition. It is time-barred after five years from the said death.

A child not yet conceived at the time of a partition made by gift has a similar action to form or make his hereditary share complete.

Art. 1078

Notwithstanding the rules which apply to inter vivos gifts, the property donated must, unless otherwise agreed, be appraised at the day of the partition made by gift as regards appropriation and calculation of the reserve, provided all the children living or represented at the death of the ascendant have received a share in the anticipated partition and have expressly accepted it, and no reservation of a usufruct bearing on a sum of money has been provided for.

Art. 1078-1

The shares of certain "beneficiaries" (Act n° 88-15 of 5 Jan. 1988) may be formed, in whole or in part, from gifts, either subject to collation, or over and above their shares, which they already received from the ascendant, with regard possibly to the investments and re-investments which they may have made in the interval.

The date of appraisal applicable to an anticipated partition shall also apply to the previous gifts which are thus incorporated into it. Any stipulation to the contrary shall be deemed not written.

Art. 1078-2

The parties may also agree that a previous gift over and above a donee's share be incorporated into a partition and appropriated to the portion of the reserve of the donee as an advancement.

Art. 1078-3

The agreements specified in the two preceding Articles may take place even in the absence of new gifts of the ascendant. They shall not be considered as gratuitous transfers between descendants but as a partition made by the ascendant.

Section II - Of Partitions Made by Wills

Art. 1079

A partition made by a will produces only the effects of a partition. Its beneficiaries have the capacity of heirs and may not forego availing themselves of the will in order to claim a new partition of the succession.

Art. 1080

A child or descendant who did not receive a share equal to his portion of the reserve may bring an action for abatement in accordance with Article 1077-2.

CHAPTER VIII - OF GIFTS MADE BY ANTE-NUPTIAL AGREEMENT TO SPOUSES AND TO CHILDREN TO BE BORN OF THE MARRIAGE

Art. 1081

Every inter vivos gift of existing property, although made by an ante-nuptial agreement to the spouses or to one of them, is subject to the general rules prescribed for the gifts made as such.

It may not take place for the benefit of children to be born except in the cases stated in Chapter VI of this Title.

Art. 1082

The father and mother, other ascendants, collateral relatives of the spouses and even outsiders may dispose of all or part of the property they will leave on the day of their death, by an ante-nuptial agreement, as well for the benefit of said spouses, as for the benefit of children to be born of their marriage, in case the donor would survive the donee spouse.

Such gift, although made only for the benefit of the spouses or of one of them, shall always, in the said case of survival of the donor, be presumed made for the benefit of the children and descendants to be born of the marriage.

Art. 1083

A gift, in the form specified in the preceding Article, is irrevocable, in this sense only that the donor may not dispose gratuitously of the property contained in the gift, with the exception of moderate sums, by way of reimbursement or otherwise.

Art. 1084

A gift by an ante-nuptial agreement may be done cumulatively of existing and future property, in all or in part, provided a statement of the debts and charges of the donor existing at the time of the gift is annexed to the instrument; in which case, the donee shall be at liberty, at

the time of the death of the donor, to retain the existing property, by waiving the difference of the donor's property.

Art. 1085

Where the statement mentioned in the preceding Article was not annexed to the instrument containing a gift of the existing and future property, a donee is obliged to accept or repudiate that gift in whole. In case of acceptance, he may claim only the property existing on the day of the death of the donor, and he is liable to pay all the debts and charges of the succession.

Art. 1086

A gift may also be made by an ante-nuptial agreement in favour of the spouses and of children to be born of their marriage, subject to the condition of paying without distinction all the debts and charges of the succession of the donor, or subject to other conditions of which the fulfilment depends upon his wish, by whatever person the gift is made: the donee is obliged to fulfil the conditions unless he prefers to renounce the gift; and in case a donor by an ante-nuptial agreement has reserved to himself the power to dispose of an article included in the gift of his existing property, or of a fixed sum to be taken out of that same property, if he dies without having disposed of them, the article or the sum shall be deemed included in the gift and shall belong to the donee or his heirs.

Art. 1087

Gifts made by an ante-nuptial agreement may not be attacked or declared void on the pretext of lack of acceptance.

Art. 1088

Any gift made in favour of a marriage lapses where the marriage does not follow.

Art. 1089

Gifts made to one of the spouses, under the terms of Articles 1082, 1084 and 1086 above, lapse where the donor survives the donee spouse and his or her descendants .

Art. 1090

All gifts made to spouses by their ante-nuptial agreement are, when the succession of the donor opens, abatable up to the portion which the law allows the donor to dispose of.

CHAPTER IX - OF DISPOSITIONS BETWEEN SPOUSES, EITHER BY ANTE-NUPTIAL AGREEMENT OR DURING MARRIAGE

Art. 1091

Spouses may, by an ante-nuptial agreement, make to each other, or one to the other, such gift as they deem proper, under the amendments hereafter laid down.

Art. 1092

Any inter vivos gift of existing property, made between spouses by an ante-nuptial agreement shall not be deemed made under condition of survival of the donee where that condition is not formally expressed; and it shall be subject to all the rules and forms above prescribed for these kinds of gifts.

Art. 1093

A gift of future property, or of existing and future property, made between spouses by an ante-nuptial agreement, either single or reciprocal, shall be subject to the rules laid down by the preceding Chapter, as regards similar gifts made by a third person, except that it may not pass to the children born of the marriage, in case of death of the donee spouse before the donor spouse.

Art. 1094

(Act n° 72-3 of 3 Jan. 1972)

A spouse may, either by an antenuptial agreement, or during marriage, in case he or she leaves no legitimate or illegitimate children or descendants, dispose in favour of the other spouse in ownership, of everything he or she may dispose of in favour of a stranger, and, in addition, of the bare ownership of the portion reserved to ascendants by Article 914 of this Code.

Art. 1094-1

(Act n° 72-3 of 3 Jan. 1972)

Where a spouse leaves children or descendants, either legitimate, born or not of the marriage, or illegitimate, he or she may dispose in favour of the other spouse, either of ownership of what he or she may dispose of in favour of a stranger, or of one-fourth of his property in ownership and of the other three-fourths in usufruct, or else of the totality of property in usufruct only.

Art. 1094-2 [repealed]

Art. 1094-3

(Act n° 72-3 of 3 Jan. 1972)

Children or descendants may, notwithstanding any stipulation of the disposing party to the contrary, require, as to property subject to usufruct, that an inventory of movables as well as a statement of immovables be drawn up, that funds be invested and that bearer securities be, at the choice of the usufructuary, converted into registered securities or deposited with an accredited depositary.

Art. 1095

A minor may, by an ante-nuptial agreement, donate to the other spouse, either by a single gift or by a reciprocal gift, only with the consent and assistance of those whose consent is required for the validity of the marriage; and with that consent, he may donate everything the law allows a spouse of full age to donate to the other spouse.

Art. 1096

(Act of 18 Feb. 1938)

All gifts made between spouses, during the marriage, although named inter vivos, are always revocable.

[repealed]

Those gifts are not revoked by the unforeseen birth of children.

Art. 1097 and 1097-1 [repealed]

Art. 1098

(Act n° 72-3 of 3 Jan. 1972)

Where a remarried spouse made, to his or her second spouse, within the limits of Article 1094-1, a gratuitous transfer in ownership, each child of the first bed has, so far as he is concerned, unless otherwise unequivocally directed by the disposing party, the power to substitute to the fulfilment of that transfer the waiver of the usufruct of the share of succession he would have received failing a surviving spouse .

Those who have exercised that power may require the application of the provisions of Article 1094-3 .

Art. 1099

Spouses may not indirectly donate to each other more what they are allowed by the above provisions .

Any gift, whether disguised or made to intermediaries, is void.

Art. 1099-1

(Act n° 67-1179 of 28 Dec. 1967)

Where a spouse acquires a property with funds which were donated to him or her by the other for that purpose, the gift is only of the funds and not of the property in which they were invested.

In that case, the rights of the donor or of his or her heirs have as their subject matter a sum of money according to the present value of the property. Where the property has been transferred, one considers the value it had on the day of the transfer, and where a new property has been substituted to the property transferred, the value of that new property.

Art. 1100 [repealed]

TITLE III

OF CONTRACTS OR OF CONVENTIONAL OBLIGATIONS IN GENERAL

CHAPTER I - PRELIMINARY PROVISIONS

Art. 1101

A contract is an agreement by which one or several persons bind themselves, towards one or several others, to transfer, to do or not to do something.

Art. 1102

A contract is synallagmatic or bilateral where the contracting parties bind themselves mutually towards each other.

Art. 1103

It is unilateral where one or more persons are bound towards one or several others, without there being any obligation on the part of the latter.

Art. 1104

It is commutative where each party binds himself to transfer or do a thing which is considered as the equivalent of what is transferred to him or of what is done for him.

Where the equivalent consists in a chance of gain or of loss for each party, depending upon an uncertain event, a contract is aleatory.

Art. 1105

A contract of benevolence is one by which one of the parties procures a purely gratuitous advantage to the other.

Art. 1106

A contract for value is one which obliges each party to transfer or do something.

Art. 1107

Contracts, whether they have a specific denomination or not, are subject to general rules, which are the subject matter of this Title.

Particular rules for certain contracts are laid down under the Titles relating to each of them; and the particular rules for commercial transactions are laid down by the legislation that relates to commerce.

CHAPTER II - OF THE ESSENTIAL REQUISITES FOR THE VALIDITY OF AGREEMENTS

Art. 1108

Four requisites are essential for the validity of an agreement:

The consent of the party who binds himself;

His capacity to contract;

A definite object which forms the subject-matter of the undertaking;

A lawful cause in the obligation.

Section I - Of Consent

Art. 1109

There is no valid consent, where the consent was given only by error, or where it was extorted by duress or abused by deception.

Art. 1110

Error is a ground for annulment of an agreement only where it rests on the very substance of the thing which is the object thereof.

It is not a ground for annulment where it only rests on the person with whom one has the intention of contracting, unless regard to/for that person was the main cause of the agreement .

Art. 1111

Duress exerted against the person who has contracted the obligation is a ground for annulment even though it was exerted by a third party different from the one for whose benefit the agreement was made.

Art. 1112

There is duress where it is of a nature to make an impression upon a reasonable person and where it can inspire him with a fear of exposing his person or his wealth to considerable and present harm.

Regard shall be paid, on this question, to the age, the sex and the condition of the persons.

Art. 1113

Duress is a ground for annulment of a contract, where it is exerted not only against a contracting party, but also against the party's spouse, against his or her descendants or ascendants.

Art. 1114

Reverential fear alone towards a father, mother or other ascendant, without any duress being exerted , may not suffice to annul a contract.

Art. 1115

A contract may no longer be attacked on the ground of duress where, since duress has ceased, that contract has been approved, either expressly, or by conduct, or in letting the time fixed by law for restitution elapse.

Art. 1116

Deception is a ground for annulment of a contract where the schemes used by one of the parties are such that it is obvious that, without them, the other party would not have entered into the contract.

It may not be presumed, and must be proved.

Art. 1117

An agreement entered into by error, duress or deception is not void by operation of law; it only gives rise to an action for annulment or rescission, in the cases and in the manner explained in Section VII of Chapter V of this Title.

Art. 1118

Loss vitiates agreements only in certain contracts and with regard to certain persons, as will be explained in the same Section.

Art. 1119

As a rule, one may, bind oneself and stipulate in his own name, only for oneself.

Art. 1120

One may, nevertheless stand guarantee for a third party, by promising his acting; subject to a compensation against him who stood guarantee or promised to obtain ratification, where the third party refuses to keep the undertaking.

Art. 1121

One may likewise stipulate for the benefit of a third party, where it is the condition of a stipulation which one makes for oneself or of a gift which one makes to another. He who made that stipulation may no longer revoke it, where the third party declares that he wishes to take advantage of it.

Art. 1122

One is deemed to have stipulated for himself and for his heirs and assigns, unless the contrary is expressed or results from the nature of the agreement.

Section II - Of the Capacity of Contracting Parties

Art. 1123

Any person may enter into a contract, unless he has been declared incapable of it by law.

Art. 1124

(Act n° 68-5 of 3 Jan. 1968)

Are incapable of entering into a contract, to the extent defined by law:

Non-emancipated minors;

Adults protected within the meaning of Article 488 of this Code.

Art. 1125

(Act n° 68-5 of 3 Jan. 1968)

Persons capable of binding themselves may not set up the incapacity of those with whom they have made a contract.

Art. 1125-1

(Act n° 68-5 of 3 Jan. 1968)

Except for authorization by court, it is forbidden, on pain of annulment, for whomever exercises a function or fills an employment in an institution sheltering elderly persons or dispensing psychiatric care, to stand as purchaser of a property or assignee of a right belonging to a person admitted to the institution, or to take on lease lodgings occupied by that person before his admission to the institution.

For the implementation of this Article, shall be deemed intermediaries, the spouse, ascendants and descendants of the persons to whom the above-enacted prohibitions apply.

Section III - Of the Object and Subject-Matter of Contracts

Art. 1126

Any contract has for its object a thing which one party binds himself to transfer, or which one party binds himself to do or not to do.

Art. 1127

The mere use or the mere possession of a thing may be the object of a contract, like the thing itself.

Art. 1128

Only things which may be the subject matter of legal transactions between private individuals may be the object of agreements.

Art. 1129

An obligation must have for its object a thing determined at least as to its kind.

The quantity of the thing may be uncertain, provided it can be determined.

Art. 1130

Future things may be the object of an obligation.

One may not however renounce a succession which is not open, or make any stipulation with respect to such succession, even with the consent of him whose succession is concerned.

Section IV - Of Cause

Art. 1131

An obligation without cause or with a false cause, or with an unlawful cause, may not have any effect.

Art. 1132

An agreement is nevertheless valid, although its cause is not expressed.

Art. 1133

A cause is unlawful where it is prohibited by legislation, where it is contrary to public morals or to public policy.

CHAPTER III - OF THE EFFECT OF OBLIGATIONS

Section I - General Provisions

Art. 1134

Agreements lawfully entered into take the place of the law for those who have made them.

They may be revoked only by mutual consent, or for causes authorized by law.

They must be performed in good faith.

Art. 1135

Agreements are binding not only as to what is therein expressed, but also as to all the consequences which equity, usage or statute give to the obligation according to its nature.

Section II – Of the Obligation to Transfer

Art. 1136

An obligation to transfer carries that of delivering the thing and of keeping it until delivery, on pain of damages to the creditor.

Art. 1137

An obligation to watch over the preservation of a thing, whether the agreement has as its object the profit of one party, or it has as its object their common profit, compels the one who is responsible to give it all the care of a prudent administrator.

That obligation is more or less extensive as regards certain contracts, whose effects, in this respect, are explained under the Titles which relate to them.

Art. 1138

An obligation of delivering a thing is complete by the sole consent of the contracting parties.

It makes the creditor the owner and places the thing at his risks from the time when it should have been delivered, although the handing over has not been made, unless the debtor has been given notice to deliver; in which case, the thing remains at the risk of the latter.

Art. 1139

A debtor is given notice of default either through a demand or other equivalent act "such as a letter missive, where a sufficient requisition results from its terms" (Act n° 91-650 of 9 July 1991), or by the effect of the agreement where it provides that the debtor will be put in default without any notice and through the mere expiry of time .

Art. 1140

The effects of an obligation to convey or deliver an immovable are regulated in the Title Of Sales and in the Title Of Prior Charges and Mortgages.

Art. 1141

Where a thing which one is bound to transfer or deliver to two persons successively is purely movable, the one of the two who has been put in actual possession is preferred and remains owner of it, although his title is subsequent as to date, provided however that the possession is in good faith.

Section III - Of the Obligation to Do or not to Do

Art. 1142

Any obligation to do or not to do resolves itself into damages, in case of non-performance on the part of the debtor.

Art. 1143

Nevertheless, a creditor is entitled to request that what has been done through breach of the undertaking be destroyed; and he may have himself authorized to destroy it at the expense of the debtor, without prejudice to damages, if there is occasion.

Art. 1144

A creditor may also, in case of non-performance, be authorized to have the obligation performed himself, at the debtor's expense . "The latter may be ordered to advance the sums necessary for that performance " (Act n° 91-650 of 9 July 1991) .

Art. 1145

Where there is an obligation not to do, he who violates it owes damages by the mere fact of the violation.

Section IV - Of Damages Resulting from the Non-Performance of Obligations

Art. 1146

Damages are due only where a debtor is given notice to fulfil his obligation, except nevertheless where the thing which the debtor has bound himself to transfer or to do could be

transferred or done only within a certain time which he has allowed to elapse. "Notice of default may follow from a letter missive where a sufficient requisition results from it" (Act n° 91-650 of 9 July 1991).

Art. 1147

A debtor shall be ordered to pay damages, if there is occasion, either by reason of the non-performance of the obligation, or by reason of delay in performing, whenever he does not prove that the non-performance comes from an external cause which may not be ascribed to him, although there is no bad faith on his part.

Art. 1148

There is no occasion for any damages where a debtor was prevented from transferring or from doing that to which he was bound, or did what was forbidden to him, by reason of force majeure or of a fortuitous event.

Art. 1149

Damages due to a creditor are, as a rule, for the loss which he has suffered and the profit which he has been deprived of, subject to the exceptions and modifications below.

Art. 1150

A debtor is liable only for damages which were foreseen or which could have been foreseen at the time of the contract, where it is not through his own intentional breach that the obligation is not fulfilled.

Art. 1151

Even in the case where the non-performance of the agreement is due to the debtor's intentional breach, damages may include, with respect to the loss suffered by the creditor and the profit which he has been deprived of, only what is an immediate and direct consequence of the non-performance of the agreement.

Art. 1152

Where an agreement provides that he who fails to perform it will pay a certain sum as damages, the other party may not be awarded a greater or lesser sum.

(Act n° 75-597 of 9 July 1975) Nevertheless, the judge may "even of his own motion" (Act n° 85-1097 of 11 Oct. 1985) moderate or increase the agreed penalty, where it is obviously excessive or ridiculously low. Any stipulation to the contrary shall be deemed unwritten.

Art. 1153

(Act n° 75-619 of 11 July 1975) In obligations which are restricted to the payment of a certain sum, the damages resulting from delay in performance shall consist only in awarding interests at the statutory rate, except for special rules for commerce and suretyship.

(Ord. n° 59-148 of 7 Jan. 1959) Those damages are due without the creditor having to prove any loss.

(Act n° 75-619 of 11 July 1975) They are due only from the day of a demand for payment "or of another equivalent act such as a letter missive where a sufficient requisition results from it" (Act n° 92-644 of 13 July 1992), except in the case where the law makes them run as a matter of right.

(Act of 7 April 1900) A creditor to whom his debtor in delay has caused, by his bad faith, a loss independent of that delay may obtain damages distinct from the interest on arrears of the debt.

Art. 1153-1

(Act n° 85-677 of 5 July 1985)

In all matters, the award of a compensation involves interest at the statutory rate even failing a claim or a specific provision in the judgment. Save as otherwise provided by legislation, that interest runs from the handing down of the judgment unless the judge otherwise rules . In case a udgment allowing an indemnity for compensation of a loss is unreservedly affirmed by an appellate judge, the determination as a matter of law produces interest as from the judgment of first instance. In the other cases, an indemnity allowed on appeal produces interest from the judgment given in appeal. The appellate judge may always derogate from the provisions of this paragraph.

Art. 1154

Interests due on capital may produce interest, either by a judicial claim, or by a special agreement, provided that, either in the claim, or in the agreement, the interest concerned be owed at least for one whole year.

Art. 1155

Nevertheless, the revenue owed, such as farm rents, rents, arrearages of perpetual or life annuities, produce interest from the day of the claim or of the agreement.

The same rule shall apply to the restitution of fruits and to interest paid by a third party to a creditor on behalf of the debtor .

Section V- Of the Interpretation of Agreements

Art. 1156

One must in agreements seek what the common intention of the contracting parties was, rather than pay attention to the literal meaning of the terms.

Art. 1157

Where a clause admits of two meanings, one shall rather understand it in the one with which it may have some effect, than in the meaning with which it could not produce any.

Art. 1158

Terms which admit of two meanings shall be taken in the meaning which best suits the subject matter of the contract.

Art. 1159

What is ambiguous shall be interpreted by what is in use in the region where the contract was made.

Art. 1160

Terms which are customary shall be supplemented in the contract, even though they are not expressed there.

Art. 1161

All the clauses of an agreement are to be interpreted with reference to one another by giving to each one the meaning which results from the whole instrument.

Art. 1162

In case of doubt, an agreement shall be interpreted against the one who has stipulated, and in favour of the one who has contracted the obligation .

Art. 1163

However general the terms in which an agreement is phrased may be, it shall include only the things upon which the parties appear to have intended to contract.

Art. 1164

Where in a contract one case was expressed for explaining the obligation, it shall not be deemed that it was thereby intended to reduce the scope of the agreement which extends as of right to cases not expressed.

Section VI - Of the Effect of Agreements with Respect to Third Parties

Art. 1165

Agreements produce effect only between the contracting parties; they do not harm a third party, and they benefit him only in the case provided for in Article 1121.

Art. 1166

Nevertheless, creditors may exercise their debtor's rights and actions, except those which are exclusively dependent on the person.

Art. 1167

They may also, on their own behalf, attack transactions made by their debtor in fraud of their rights .

(Act n° 65-570 of 13 July 1965) They shall nevertheless, as to those of their rights which are laid down in the Title Of Ante-nuptial Agreement and of Matrimonial Regimes, comply with the rules therein prescribed .

CHAPTER IV - OF THE VARIOUS KINDS OF OBLIGATIONS

Section I - Of Conditional Obligations

§ 1 - Of Condition in General and of its Various Kinds

Art. 1168

An obligation is conditional where it is made to depend upon a future and uncertain event, either by suspending it until the event happens, or by cancelling it, according to whether the event happens or not.

Art. 1169

A casual condition is one which depends upon chance and which is in no way in the power of the creditor or of the debtor.

Art. 1170

A potestative condition is one which makes the fulfilment of the agreement depend upon an event which one or the other of the contracting parties has the power to make happen or to prevent.

Art. 1171

A mixed condition is one which depends at the same time upon the wish of one of the contracting parties, and upon the wish of a third party.

Art. 1172

Any condition relating to an impossible thing, or contrary to public morals, or prohibited by law, is void, and renders void the agreement which depends upon it.

Art. 1173

A condition not to do an impossible thing does not render void the obligation contracted upon that condition.

Art. 1174

An obligation is void where it was contracted subject to a potestative condition on the part of the one who binds himself.

Art. 1175

Every condition must be fulfilled in the manner in which the parties have in all likelihood wished and intended that it should be.

Art. 1176

Where an obligation is contracted subject to the condition that an event will happen within a fixed time, that condition is deemed failed where the time has elapsed without the event having happened . Where there is no time fixed, the condition may always be fulfilled; and it is deemed failed only when it has become certain that the event will not happen .

Art. 1177

Where an obligation is contracted subject to the condition that an event will not happen in a fixed time, that condition is fulfilled when that time has expired without the event having happened: it is so too when, before the term, it is certain that the event will not happen; and where there is no determined time, it is fulfilled only when it is certain that the event will not happen.

Art. 1178

A condition is deemed fulfilled where it is the debtor, bound under that condition, who has prevented it from being fulfilled.

Art. 1179

A condition which is fulfilled has a retroactive effect to the day when the undertaking was contracted. Where the creditor dies before the condition is fulfilled, his rights pass to his heir.

Art. 1180

A creditor may, before the condition is fulfilled, take all steps to preserve his right.

§ 2 - Of Condition Precedent

Art. 1181

An obligation contracted under a condition precedent is one which depends either on a future and uncertain event, or on an event having presently happened, but still unknown to the parties.

In the first case, the obligation may be performed only after the event.

In the second case, the obligation takes effect as from the day when it was contracted.

Art. 1182

Where an obligation was contracted under a condition precedent, the thing which is the subject matter of the agreement remains at the risk of the debtor who has bound himself to deliver it only in the case of the occurrence of the condition.

Where the thing perishes entirely, without the fault of the debtor, the obligation is extinguished.

Where the thing has been deteriorated without the fault of the debtor, the creditor has the choice either to avoid the obligation, or to demand the thing in the condition in which it is, without any price reduction.

Where the thing has been deteriorated through fault of the debtor, the creditor has the right either to avoid the obligation, or to demand the thing in the condition in which it is, with damages.

§ 3 - Of Condition Subsequent

Art. 1183

A condition subsequent is one which, when it is fulfilled, brings about the revocation of the obligation, and which puts things back in the same condition as if the obligation had not existed.

It does not suspend the fulfilment of the obligation; it only compels the creditor to return what he has received, in the case where the event contemplated by the condition happens.

Art. 1184

A condition subsequent is always implied in synallagmatic contracts, for the case where one of the two parties does not carry out his undertaking.

In that case, the contract is not avoided as of right. The party towards whom the undertaking has not been fulfilled has the choice either to compel the other to fulfil the agreement when it is possible, or to request its avoidance with damages.

Avoidance must be applied for in court, and the defendant may be granted time according to circumstances.

Section II - Of Obligations with a Term

Art. 1185

A term differs from a condition, in that it does not suspend the undertaking, of which it only delays the fulfilment.

Art. 1186

What is due only with a term may not be claimed before the expiry of the term; but what was paid in advance may not be recovered.

Art. 1187

A term is always presumed stipulated in favour of the debtor, unless it follows from the stipulation, or from the circumstances, that it was also agreed in favour of the creditor.

Art. 1188

(Act n° 85-98 of 25 Jan. 1985)

A debtor may no longer claim the benefit of a term where by his own act he has lessened the guarantees which he had given his creditor by the contract.

Section III - Of Alternative Obligations

Art. 1189

The debtor of an alternative obligation is discharged by the delivery of one of the two things which were included in the obligation.

Art. 1190

The choice belongs to the debtor, where it was not expressly granted to the creditor.

Art. 1191

A debtor may discharge himself by delivering one of the things promised; but he may not compel the creditor to receive a part of one and a part of the other.

Art. 1192

An obligation is outright, although contracted in an alternative manner, where one of the two things promised could not be the subject matter of the obligation.

Art. 1193

An alternative obligation becomes outright, where one of the things promised perishes and may no longer be delivered, even through the fault of the debtor. The price of that thing may not be offered in its place.

Where both have perished, and the debtor is at fault as to one of them, he shall pay the price of the one which has perished last.

Art. 1194

Where, in the cases provided for in the preceding Article, the choice was conferred to the creditor under the agreement,

Either one of the things only has perished; and then, if it is without fault of the debtor, the creditor shall have the one which remains; if the debtor is at fault, the creditor may demand the thing which remains, or the price of the one which has perished;

Or both things have perished; and then, if the debtor is at fault as to both, or even only as to one of them, the creditor may demand the price of one or the other, at his choice.

Art. 1195

Where both things have perished without the fault of the debtor, and before he was put in default, the obligation is extinguished, in accordance with Article 1302.

Art. 1196

The same principles shall apply in case there are more than two things included in the alternative obligation.

Section IV - Of Joint and Several Obligations

§ 1 - Of Joint and Several Creditors

Art. 1197

An obligation is joint and several between several creditors, where the instrument of title expressly gives to each of them the right to demand payment of the whole claim, and payment made to one of them discharges the debtor, although the benefit of the obligation is to be partitioned and divided between the various creditors.

Art. 1198

It is at the choice of the debtor to pay one or another of joint and several creditors , so long as he is not prevented by legal proceedings instituted by one of them.

Nevertheless, a release given by only one of the joint and several creditors discharges the debtor only for the share of that creditor .

Art. 1199

An act which interrupts the running of the statute of limitation with respect to one of the joint and several creditors benefits the other creditors.

§ 2 - Of Joint and Several Debtors

Art. 1200

There is joint and several liability on the part of debtors where they are bound for a same thing, so that each one may be compelled for the whole, and payment made by one alone discharges the others towards the creditor.

Art. 1201

An obligation may be joint and several although one of the debtors is bound differently from another for payment of the same thing; for instance, where one is bound only conditionally, whereas the other's undertaking is outright, or where one has been given time which has not been granted to the other.

Art. 1202

Joint and several liability may not be presumed: it must be expressly stipulated.

This rule only ceases in the cases where joint and several liability exists as a matter of right, under a statutory provision.

Art. 1203

A creditor of an obligation contracted jointly and severally may apply to the one of the debtors he wishes to choose, without the latter being allowed to set up the benefit of division.

Art. 1204

Proceedings brought against one of the debtors do not prevent the creditor from instituting similar ones against the others.

Art. 1205

Where a thing due has perished through the fault of one or several of the joint and several debtors or after they were given notice of default, the other debtors are not discharged from the obligation to pay the price of the thing; but they are not liable for damages.

The creditor may only recover damages from the debtors through whose fault the thing has perished or from those who were under notice of default.

Art. 1206

Proceedings instituted against one of the joint and several debtors interrupts the running of the statute of limitation with respect to all.

Art. 1207

A demand for interest brought against one of the joint and several debtors causes interest to run with respect to all.

Art. 1208

A joint and several co-debtor sued by the creditor may set up all the defences which result from the nature of the obligation, and all those which are personal to him, as well as those which are common to all the co-debtors.

He may not set up defences which are purely personal to some of the other co-debtors.

Art. 1209

Where one of the debtors becomes the sole heir of the creditor, or where the creditor becomes the sole heir of one of the debtors, the merger extinguishes the joint and several claim only for the share and portion of the debtor or of the creditor.

Art. 1210

A creditor who consents to a division of the debt with respect to one of the co-debtors retains his joint and several action against the others, but only under deduction of the share of the debtor whom he has discharged from the joint and several liability.

Art. 1211

A creditor who receives severally the share of one of his debtors, without reserving in the receipt the joint and several liability or his rights in general, renounces joint and several liability only with respect to this debtor.

A creditor is not deemed to release the debtor from the joint and several liability where he receives from him a sum equal to the portion for which he is bound, where the receipt does not mention that it is for his share .

It shall be likewise as to a mere claim brought against one of the debtors for his share, where the latter has not admitted the claim, or where no compensatory judgment has been handed down .

Art. 1212

A creditor who receives severally and without reservation from one the co-debtors his portion in the arrears or interest on the debt, loses the joint and several liability only for the arrears or interest due, not for those to become due or for the capital, unless the several payment has been continuing for ten consecutive years.

Art. 1213

An obligation contracted jointly and severally towards a creditor is divided by operation of law between the debtors, who are liable between themselves only each one for his share and portion.

Art. 1214

The co-debtor of a joint and several obligation, who paid it in full, may recover from the others only the share and portion of each one of them .

Where one of them is insolvent, the loss occasioned by his insolvency shall be apportioned pro rata between all the other solvent co-debtors and the one who made the payment .

Art. 1215

In case the creditor waives the joint and several action with respect to one of the debtors, if one or several of the other co-debtors become insolvent, the portion of those insolvent shall be apportioned pro rata between all the debtors, even between those previously discharged from the joint and several liability by the creditor.

Art. 1216

Where the affair for which the debt was contracted jointly and severally concerns only one of the joint and several co-obligors, the latter are liable for the whole debt towards the other co-debtors, who must be considered with regard to him only as his sureties .

Section V - Of Divisible and Indivisible Obligations

Art. 1217

An obligation is divisible or indivisible according to whether its object is a thing which in its delivery, or an act which in its performance, is or not susceptible of a division either physical or intellectual .

Art. 1218

An obligation is indivisible, although the thing or act which is its object is divisible by its nature, where the way in which it is considered in the obligation does not render it susceptible to part performance .

Art. 1219

A stipulated joint and several liability does not give the character of indivisibility to an obligation.

§ 1 - Of the Effects of Divisible Obligations

Art. 1220

An obligation which is susceptible of being divided must be performed between the creditor and the debtor as though it were indivisible. Divisibility operates only as to their heirs, who may claim the debt or are bound to pay it only for the shares which they receive or for which they are liable as representing the creditor or the debtor .

Art. 1221

The principle established in the preceding Article is subject to exceptions, with regard to the heirs of a debtor:

1° Where the debt is secured by a mortgage;

2° Where it is of a thing certain;

3° Where it is a question of an alternative debt of things at the choice of the creditor, of which one is indivisible;

4° Where one of the heirs is made alone responsible, by the instrument of title, of the performance of the obligation;

5° Where it results, either from the nature of the undertaking, or from the thing which is the object of it, or from the purpose intended in the contract, that the intention of the contracting parties was that the debt should not be partially discharged.

In the first three cases, the heir who possesses the thing due or the tenement mortgaged for the debt may be sued for the whole on the thing due or on the tenement mortgaged, subject to his remedy against his co-heirs. In the fourth case, the heir who is alone responsible for the debt, and in the fifth case, each heir, may also be sued for the whole, subject to his remedy against his co-heirs .

§ 2 - Of the Effects of Indivisible Obligations

Art. 1222

Each one of those who have jointly contracted an indivisible debt is liable for the whole, although the obligation was not contracted jointly and severally.

Art. 1223

It shall be likewise with regard to the heirs of a person who has contracted such an obligation.

Art. 1224

Each heir of the creditor may demand performance of an indivisible obligation in whole.

He may not release alone the whole debt; he may not receive alone the price instead of the thing. Where one of the heirs has alone released the debt or received the price of the thing, his co-heir may claim the indivisible thing only by taking into account the portion of the co-heir who has given the release or received the price.

Art. 1225

An heir of the debtor, who is sued for the whole obligation, may request time for joining his co-heirs in the action, unless the debt is of such a nature that it can be discharged only by the sued heir, against whom judgment may then be given, subject to his remedy for compensation against his co-heirs.

Section VI - Of Obligations with Penalty Clauses

Art. 1226

A penalty is a clause by which a person, in order to ensure performance of an agreement, binds himself to something in case of non-performance.

Art. 1227

Nullity of the principal obligation involves that of the penalty clause.

Nullity of the latter does no involve that of the principal obligation.

Art. 1228

A creditor, instead of claiming the penalty stipulated against the debtor who is under notice of default, may proceed with the performance of the principal obligation .

Art. 1229

A penalty clause is a compensation for the damages which the creditor suffers from the non-performance of the principal obligation.

He may not claim at the same time the principal and the penalty, unless it was stipulated for a mere delay.

Art. 1230

Whether the original obligation contains, or not a term within which it must be performed, the penalty is incurred only where the one who is bound either to deliver, or to take, or to do, is under notice of default.

Art. 1231

(Act N° 75-597 of 9 July 1975)

Where an undertaking has been performed in part, the agreed penalty may ", even of his own motion," (Act n° 85-1097 of 11 Oct. 1985) be lessened by the judge in proportion to the interest which the part performance has procured for the creditor, without prejudice to the application of Article 1152. Any stipulation to the contrary shall be deemed not written.

Art. 1232

Where an original obligation contracted with a penalty clause relates to an indivisible thing, the penalty is incurred by the breach of only one of the heirs of the debtor, and it may be claimed, either for the whole against the person in breach, or against each of the co-heirs for their share and portion, and by mortgage for the whole, subject to their remedy against the one who caused the penalty to be incurred.

Art. 1233

Where an original obligation contracted under a penalty is divisible, the penalty is incurred by the one of the debtor's heirs who contravenes that obligation, and for the share only for which he was bound in the principal obligation, without there being any action against those who have performed it.

An exception is made to this rule where the penalty clause having been added for the purpose that payment may not be made partially, a co-heir has prevented the performance of the obligation in whole. In that case, the entire penalty may be claimed against him, and against the other co-heirs for their portion only, and subject to their remedy.

CHAPTER V - OF THE EXTINGUISHMENT OF OBLIGATIONS

Art. 1234

Obligations are extinguished:

By payment;

By novation;

By voluntary release;

By set-off;

By merger;

By the loss of the thing;

By nullity or rescission;

By the effect of a condition subsequent, as was explained in the preceding Chapter; and

By the running of the statute of limitation, which will be the subject matter of a special Title.

Section I - Of Payment

§ 1 - Of Payment in General

Art. 1235

Any payment supposes a debt: what has been paid without being owed is subject to restitution.

Restitution is not allowed with respect to natural obligations which were voluntarily discharged.

Art. 1236

An obligation may be discharged by any person having an interest therein, such as a co-obligee or a surety.

An obligation may even be discharged by a third party who has no interest therein, provided that party acts in the name and on behalf of the debtor, or, where he acts in his own name, he is not subrogated to the rights of the creditor.

Art. 1237

An obligation to do may not be discharged by a third party against the wish of the creditor, where the latter has an interest in having it performed by the debtor himself .

Art. 1238

In order to pay validly, one must be the owner of the thing given in payment, and be capable of transferring it.

Nevertheless, the payment of a sum of money or of some other thing which is consumed by use, may not be recovered from a creditor who has consumed it in good faith, although the payment of it was made by a person who was not the owner or who was not capable of transferring it.

Art. 1239

Payment must be made to the creditor, or somebody having authority from him, or authorized by the court or by statute to receive for him.

Payment made to a person who has no authority to receive for the creditor, is valid, where the latter ratifies it or has profited by it.

Art. 1240

Payment made in good faith to one who was in possession of the claim is valid, even if the possessor is afterwards dispossessed.

Art. 1241

Payment made to a creditor is not valid, where he was incapable of receiving it, unless the debtor proves that the thing paid has turned to the advantage of the creditor.

Art. 1242

Payment made by a debtor to his creditor, notwithstanding an attachment or a garnishment is not valid, with respect to the attaching or garnishing creditors: the latter may, according to their rights, compel him to pay again, subject, in that case only, to his remedy against the creditor.

Art. 1243

A creditor may not be compelled to receive a thing different from the one which is owed to him, although the value of the thing offered is equal or even greater.

Art. 1244

(Act n° 91-650 of 9 July 1991)

A debtor may not compel a creditor to receive payment in part of a debt, even divisible.

Art. 1244-1

(Act n° 91-650 of 9 July 1991)

However, taking into account the debtor's position and in consideration of the creditor's needs, a judge may, within a two-year limit, defer or spread out the payment of sums due.

By a special judgement, setting out the grounds on which it is based,

, the judge may order that the sums corresponding to the deferred due dates carry interest at a reduced rate which may not be lower than the statutory rate or that the payments be appropriated first to the capital.

Furthermore, he may subordinate those measures to the performance, by the debtor, of acts appropriate for facilitating or guaranteeing the payment of the debt.

The provisions of this Article shall not apply to debts for maintenance.

Art. 1244-2

(Act n° 91-650 of 9 July 1991)

The judgment handed down under Article 1244-1 stays, the enforcement proceedings which may have been instituted by the creditor. Increases of interest or penalties incurred because of delay cease to be due during the period fixed by the judge.

Art. 1244-3

(Act n° 91-650 of 9 July 1991)

Any stipulation contrary to the provisions of Articles 1244-1 and 1244-2 shall be deemed not written.

Art. 1245

The debtor of a thing certain and determined is discharged by the delivery of the thing in the condition in which it is at the time of delivery, provided that deteriorations which happened to it did not come from his act or his fault, or from that of persons for whom he is responsible, or that before those deteriorations he was not under notice of default.

Art. 1246

Where a debt is of a thing determined only as to its kind, a debtor is not obliged to give it in the best of its kind; but he may not offer it in its worst.

Art. 1247

(Ord. n° 58-1298 of 23 Dec. 1958)

Payment must be made in the place designated by the agreement . Where a place is not designated, payment, if it is for a thing certain and determined, must be made at the place where the thing forming the object of the obligation was at the time of that obligation.

Periodical payments ordered for maintenance must be made, subject to a contrary order of the judge, at the domicile or at the residence of the person who is to receive them.

Apart from those cases, payment must be made at the domicile of the debtor.

Art. 1248

The costs of payment are borne by the debtor.

§ 2 - Of Payment with Subrogation

Art. 1249

Subrogation to the rights of a creditor for the benefit of a third person who pays him is either conventional or statutory.

Art. 1250

Such subrogation is conventional:

1° Where a creditor receiving his payment from a third person subrogates him to his rights, actions, prior charges or mortgages against the debtor: that subrogation must be express and made at the same time as the payment;

2° Where a debtor borrows a sum for the purpose of paying his debt, and of subrogating the lender to the rights of the creditor. In order that this subrogation be valid, the instrument of loan and the receipt must be drawn up before notaires ; in the instrument of loan there must be declared that the sum was borrowed in order to make the payment, and in the receipt, there must be declared that the payment has been made from the funds furnished for this purpose by the new creditor. That subrogation has its effect without the concurrence of the wish of the creditor.

Art. 1251

Subrogation takes place by operation of law:

1° For the benefit of the person who, being himself a creditor, pays another creditor who is preferred to him by reason of his prior charges or mortgages;

2° For the benefit of the purchaser of an immovable, who employs the price of his purchase for the payment of the creditors to whom that property was mortgaged;

3° For the benefit of the person who, being bound with others or for others to the payment of a debt, was interested in discharging it;

4° For the benefit of a beneficiary heir who paid from his own funds the debts of a succession.

Art. 1252

The subrogation established by the preceding Articles takes place, as well against sureties as against debtors: it may not prejudice a creditor where he has only been paid in part; in that case, he may enforce his rights, for what remains due to him, in preference to the person from whom he received only part payment.

§ 3 - Of Appropriation of Payments

Art. 1253

A debtor of several debts has the right to declare, when he pays, what debt he intends to discharge .

Art. 1254

A debtor of a debt which bears interest or produces arrears , may not, without the consent of the creditor, appropriate the payment which he makes to the capital in preference to the arrears or interest: a payment made on capital and interest, but which is not in full, shall be appropriated first to interest.

Art. 1255

Where a debtor of various debts has accepted a receipt by which the creditor has appropriated what he received to one of those debts in particular, the debtor may no longer request appropriation to a different debt, unless there has been deception or trick on the part of the creditor.

Art. 1256

Where a receipt does not bear any appropriation, the payment shall be appropriated to the debt which the debtor had at that time the greatest interest in discharging among those which are likewise due; otherwise, to the debt due, although less burdensome than those which are not.

Where the debts are of equal nature, appropriation shall be made to the oldest; all things being equal, it shall be made proportionately.

§ 4 - Of Tenders of Payment and of Deposit

Art. 1257

Where a creditor refuses to receive his payment, the debtor may make him an actual tender, and upon the refusal of the creditor to accept it, deposit the sum or the thing tendered.

Actual tenders followed by a deposit discharge the debtor; they take the place of payment with respect to him, where they are validly made, and the thing thus deposited remains at the risk of the creditor.

Art. 1258

In order that an actual tender be valid, it is necessary:

1° That it be made to a creditor having capacity to receive, or to the one who has authority to receive for him;

2° That it be made by a person capable of paying;

3° That it be for the entire sum due, for the arrears or interest due, for liquidated costs, and for a sum for non-liquidated costs, subject to its being made up;

4° That the term have elapsed, where it was stipulated in favour of the creditor;

5° That the condition under which the debt has been contracted has happened;

6° That the tender be made at the place agreed upon for payment and that, where there is no special agreement as to the place of payment, it be made either to the person of the creditor, or at his domicile, or at the domicile elected for performance of the agreement;

7° That the tender be made by a ministerial officer having capacity for such acts.

Art. 1259 [repealed]

Art. 1260

The costs of an actual tender and of a deposit are borne by the creditor, where they are valid;

Art. 1261

So long as the deposit has not be accepted by the creditor, the debtor may withdraw it; and where he withdraws it, his co-debtors or his sureties are not discharged .

Art. 1262

Where a debtor has himself obtained a judgment become res judicata, which has declared his tender and deposit good and valid, he may no longer, even with the consent of the creditor, withdraw his deposit to the detriment of his co-debtors or of his sureties .

Art. 1263

A creditor who has consented to the debtor's withdrawing his deposit after it had been declared valid by a judgment become res judicata, may no longer, for the payment of his claim, enforce the prior charges and mortgages which attached thereto: he has only a mortgage from the day when the act by which he has consented to the withdrawal of the deposit has been clothed with the forms required to establish a mortgage.

Art. 1264

Where the thing owed is a thing certain which must be delivered at the place where it is, the debtor must demand of the creditor that he removes it, by notice served upon him personally or to his domicile or to the domicile elected for the performance of the agreement. That demand made, where the creditor does nor remove the thing and the debtor needs the place in which it is set, he may obtain from the court permission to deposit it in some other place.

Art. 1265 to 1270 [repealed]

Section II - Of Novation

Art. 1271

Novation is brought about in three ways:

1° Where a debtor contracts towards his creditor a new debt which is substituted for the old one, which is extinguished;

2° Where a new debtor is substituted for the old one who is discharged by the creditor;

3° Where, by the effect of a new undertaking, a new creditor is substituted for the old one, towards whom the debtor is discharged.

Art. 1272

Novation may be brought about only between persons capable of contracting.

Art. 1273

Novation may not be presumed; the wish to bring it about must clearly result from the instrument.

Art. 1274

Novation by substitution of a new debtor may be brought about without the assistance of the first debtor.

Art. 1275

A delegation by which a debtor gives a creditor another debtor who binds himself towards the creditor, does not bring about a novation, unless the creditor has expressly declared that he intended to discharge his debtor who made the delegation.

Art. 1276

A creditor who has discharged a debtor by whom a delegation was made, has no remedy against that debtor, where the delegate becomes insolvent, unless the instrument contains an express reserve or the delegate was already [under a judicial arrangement], or insolvent at the time of the delegation.

Art. 1277

A mere indication, made by a debtor, of a person who is to pay in his stead, does not bring about a novation.

It shall be likewise as to a mere indication made by a creditor, of a person who is to receive for him.

Art. 1278

Prior charges and mortgages of a former claim do not pass to the one which is substituted to it, unless the creditor has expressly reserved them.

Art. 1279

Where novation is brought about by substitution of a new debtor, the original prior charges and mortgages of the claim do not pass on the property of the new debtor.

(Act n° 71-579 of 16 July 1971) The original prior charges and mortgages of the claim may be reserved with the consent of the owners of the encumbered property, for the guarantee of the performance of the undertaking of the new debtor .

Art. 1280

Where novation is brought about between a creditor and one of the joint and several debtors, the prior charges and mortgages of the former claim may be reserved only on the property of the person who contracts the new debt.

Art. 1281

Co-debtors are released by a novation made between a creditor and one of the joint and several debtors.

A novation brought about with respect to a principal debtor discharges the sureties.

Nevertheless, where a creditor in the first case, has required adhesion of the co-debtors or, in the second case, that of the sureties, the former claim subsists, where the co-debtors or the sureties refuse to agree to the new arrangement.

Section III - Of Remission of Debt

Art. 1282

A voluntary remittance of the original instrument under private signature, by a creditor to a debtor, is proof of discharge.

Art. 1283

A voluntary remittance of the executory copy of the instrument of title establishes a presumption of remission of the debt or of payment, without prejudice to proof of the contrary.

Art. 1284

A voluntary remittance of the original instrument under private signature, or of the executory copy of the instrument of title, to one of the joint and several debtors, has the same effect for the benefit of his co-debtors.

Art. 1285

A remission or agreed discharge for the benefit of one of the joint and several co-debtors releases all the others, unless the creditor has expressly reserved his rights against the latter.

In that last case, he may recover the debt only after deducting the share of the one to whom he has made the remission.

Art. 1286

A remittance of a thing given as pledge does not suffice to establish a presumption of remission of debt.

Art. 1287

A remission or agreed discharge granted to a principal debtor releases the sureties;
That granted to a surety does not release the principal debtor;

That granted to one of the sureties does not release the others.

Art. 1288

What a creditor has received from a surety to discharge his security shall be appropriated to the debt, and turn to the discharge of the principal debtor and of the other sureties.

Section IV - Of Set-Off

Art. 1289

Where two persons are debtors towards each other, set-off is brought about which extinguishes both debts, in the manner and in the cases hereafter laid down.

Art. 1290

Set-off is brought about as of right by the sole operation of the law, even without the knowledge of the debtors; the two debts are reciprocally extinguished, from the moment when they happen to exist at the same time, to the extent of their respective amounts.

Art. 1291

Set-off takes place only between two debts which have likewise as their object a sum of money or a certain quantity of fungibles of the same kind and which are likewise liquid and due.

Undisputed performances in crops or commodities, and whose price is fixed by market lists, may be set off against liquid and due sums.

Art. 1292

Days of grace are not a bar to set-off.

Art. 1293

Set-off takes place whatever the origin of either debt may be, except in the case:

1° Of a claim for restitution of a thing of which the owner has been unjustly deprived;

2° Of a claim for restitution of a deposit or of a loan for use;

3° Of a debt due for maintenance declared not liable to attachment.

Art. 1294

A surety may raise set-off for what the creditor owes to the principal debtor.

But a principal debtor may not raise set-off of what the creditor owes to the surety.

Similarly, a joint and several debtor may not raise set-off of what the creditor owes to his co-debtor.

Art

1295

A debtor who has accepted outright the assignment which a creditor made of his rights to a third party may no longer raise against the assignee a set-off which he might have raised against the assignor before the acceptance.

As regards an assignment which was not accepted by the debtor, but notice of which has been served upon him, it prevents only set-off as to claims subsequent to that notice.

Art. 1296

Where two debts are not payable at the same place, set-off may be raised only by giving satisfaction as to the costs of delivery.

Art. 1297

Where several debts due by the same person may be set off , the same rules are followed as to set-off as those established for appropriation by Article 1256.

Art. 1298

Set-off does not take place to the detriment of the vested rights of third parties. Thus, a person who, being a debtor, has become a creditor after an attachment has been made in his hands by a third party may not raise set-off to the detriment of the attaching party.

Art. 1299

He who has paid a debt which was extinguished as of right by set-off may no longer, by enforcing the claim for which he has not raised set-off, avail himself of the prior charges or mortgages attached thereto, to the detriment of third parties, unless he had good reason for not being aware of the claim which would have set off his debt.

Section V - Of Merger

Art. 1300

Where the capacities of creditor and debtor are united in the same person, a merger is made as of right which extinguishes both claims.

Art. 1301

A merger which is brought about in the person of a principal debtor benefits his sureties;

That which is brought about in the person of a surety does not involve extinguishment of the principal obligation ;

That which is brought about in the person of a creditor, benefits his joint and several co-debtors only as to the share and portion of which he was debtor.

Section VI - Of the Loss of a Thing Due

Art. 1302

Where a thing certain and determined which was the object of an obligation perishes, may no longer be the subject matter of legal transactions between private individuals, or is lost in such a way that its existence is absolutely unknown, the obligation is extinguished if the thing

has perished or has been lost without the fault of the debtor, and before he was under notice of default.

Even where the debtor is under notice of default, if he has not assumed fortuitous events, the obligation is extinguished in the case where the thing would also have perished in the hands of the creditor if it had been delivered to him.

The debtor is obliged to prove the fortuitous event which he alleges.

In whatever manner a thing which has been stolen may have perished, or been lost, its loss does not excuse the person who took it away from restitution of its price.

Art. 1303

Where a thing perishes, may no longer be the subject matter of legal transactions between private individuals, or is lost, without the fault of the debtor, he is obliged, if there are any rights or actions for indemnity with respect to that thing, to assign them to his creditor.

Section VII - Of the Action for Annulment or Rescission of Agreements

Art. 1304

(Act n° 68-05 of 3 Jan . 1968)

In all cases where an action for annulment or rescission of an agreement is not limited to a shorter time by a special statute, that action lasts five years.

In case of duress, that time runs only from the day when it has ceased; in case of error or deception, from the day when they were discovered.

As regards transactions entered into by a minor, the time runs only from the day of majority or emancipation; and as regards transactions entered into by a protected adult, from the day when he had knowledge of them, while being in a situation to validly redo them. It runs against the heirs of a person under a disability only from the day of the death, unless it has begun to run previously.

Art. 1305

(Act n° 64-1230 of 14 Dec. 1964)

A mere loss gives rise to rescission in favour of a non-emancipated minor, with respect to all kinds of agreements.

Art. 1306

A minor is not entitled to rescission on the ground of loss, where it results only from a casual and unforeseen event.

Art. 1307

-A mere declaration of majority, made by a minor, is not a bar to rescission.

Art. 1308

(Act n° 74-631 of 5 July 1974)

A minor who practises a profession is not entitled to rescission against undertakings which he has taken upon himself in the practice thereof.

Art. 1309

A minor is not entitled to rescission against the terms contained in his ante-nuptial agreement where they were made with the consent and assistance of those whose consent is required for the validity of his marriage.

Art. 1310-

He is not entitled to rescission against the obligations resulting from his intentional or unintentional wrongs.

Art. 1311

He is no longer allowed to repudiate an undertaking which he had entered into during his minority where he has ratified it when an adult, whether that undertaking was void in its form, or only subject to rescission.

Art. 1312

(Act of 18 Feb. 1938)

Where minors or adults in guardianship are entitled in those capacities to rescission against their undertakings, the repayment of what may have been paid during the minority or the guardianship of adults in consequence of those undertakings, may not be demanded, unless it is proved that what has been paid has turned to their benefit.

Art. 1313

Adults are entitled to rescission for loss only in the cases and subject to the conditions specially laid down in this Code.

Art. 1314

Where the formalities required with regard to minors or adults in guardianship either for the conveyance of an immovable, or for the partition of a succession, have been fulfilled, they shall be, in relation to those transactions, considered as though they had made them during majority or before the guardianship of adults.

CHAPTER VI - OF THE PROOF OF OBLIGATIONS AND OF PAYMENT

Art. 1315

A person who claims the performance of an obligation must prove it.

Reciprocally, a person who claims to be released must substantiate the payment or the fact which has produced the extinguishment of his obligation.

Art. 1315-1

(Act n° 2000-230 of 13 March 2000)

The rules relating to documentary evidence, oral evidence, presumptions, admissions of parties and oaths are explained in the following Sections .

Section I - Of Documentary Evidence

§ 1 - General Provisions

(Act n° 2000-230 of 13 March 2000)

Art. 1316

Documentary evidence, or evidence in writing, results from a sequence of letters, characters, figures or of any other signs or symbols having an intelligible meaning, whatever their medium and the ways and means of their transmission may be.

Art. 1316-1

A document in electronic form is admissible as evidence in the same manner as a paper-based document, provided that the person from whom it proceeds can be duly identified and that it be established and stored in conditions calculated to secure its integrity.

Art. 1316-2

Where a statute has not fixed other principles, and failing a valid agreement to the contrary between the parties, the judge shall regulate the conflicts in matters of documentary evidence by determining by every means the most credible instrument, whatever its medium may be.

Art. 1316-3

An electronic-based document has the same probative value as a paper-based document .

Art. 1316-4

The signature necessary to the execution of a legal transaction identifies the person who apposes it. It makes clear the consent of the parties to the obligations which flow from that transaction. When it is apposed by a public officer, it confers authenticity to the document.

Where it is electronic, it consists in a reliable process of identifying which safeguards its link with the instrument to which it relates. The reliability of that process shall be presumed, until proof to the contrary, where an electronic signature is created, the identity of the signatory secured and the integrity of the instrument safeguarded, subject to the conditions laid down by decree in Conseil d'État .

§ 2 - Of Authentic Instruments

Art. 1317

An authentic instrument is one which has been received by public officers empowered to draw up such instruments at the place where the instrument was written and with the requisite formalities.

(Act n° 2000-230 of 13 March 2000) It may be drawn up on an electronic medium where it is established and stored in conditions fixed by decree in Conseil d'État .

Art. 1318

An instrument which is not authentic because of the lack of power or incapacity of the officer, or of a defect in form, has the value of a private instrument, if it was signed by the parties.

Art. 1319

An authentic instrument is conclusive evidence of the agreement it contains between the contracting parties and their heirs or assigns.

Nevertheless in case of a criminal complaint for forgery, the execution of the instrument allegedly forged is suspended by the indictment; and in case of allegation of forgery made incidentally, the courts may, according to the circumstances, suspend temporarily the execution of the instrument.

Art. 1320

An instrument, either authentic, or under private signature, is evidence between the parties, even of what is expressed only in declaratory terms, provided the declaration has a direct connection with the operative part. Declarations irrelevant to the operative part may only be used as a commencement of proof.

Art. 1321

Counter letters may be effective only between the contracting parties; they may not be effective against third parties.

§ 3 - Of Instruments under Private Signature

Art. 1322.-An instrument under private signature, acknowledged by the person against whom it is set up, or statutorily held as acknowledged, is, between those who have signed it and between their heirs and assigns, as conclusive as an authentic instrument.

Art. 1323

A person against whom an instrument under private signature is set up is obliged to formally admit or disclaim his handwriting or his signature.

His heirs or assigns may confine themselves to declare that they are not aware of the handwriting or the signature of their predecessor in title.

Art. 1324.-In the case where the party disclaims his handwriting or his signature, and in the case where his heirs or assigns declare that they are not aware of them, a verification shall be ordered in court.

Art. 1325

Instruments under private signature which contain synallagmatic agreements are valid only insofar as they have been made in as many originals as there are parties having a distinct interest.

One original suffices for all the persons who have the same interest.

Each original must indicate the number of originals which have been made.

Nevertheless, a failure to mention that the originals have been made in duplicate, triplicate, etc., may not be set up by the party who has performed on his part the agreement entered on the instrument.

Art. 1326

(Act n° 80-525 of 12July 1980)

The legal transaction by which one party alone undertakes towards another to pay him a sum of money or to deliver him a fungible must be ascertained in an instrument which carries the signature of the person who subscribes that undertaking as well as the mention, written “by himself” (Act n° 2000-230 of 13 March 2000), of the sum or of the quantity in full and in figures. In case of difference, the instrument under private signature is valid for the sum written in full.

Art. 1327 [repealed]

Art. 1328

Instruments under private signature have a date against third parties only from the day when they have been registered, from the day of the death of the one or one of those who have signed them, or from the date when their gist is established in instruments drawn up by public officers, such as memoranda of sealing or of inventory.

Art. 1329

The registers of merchants are not evidence of the supplies therein mentioned against persons who are not merchant, except for what will be stated with regard to oaths.

Art. 1330

The books of merchants are evidence against them; but he who wishes to take advantage from them may not separate from them what they contain contrary to his claim.

Art. 1331

Family registers and papers do not constitute an instrument of title for the one who wrote them. They are evidence against him: 1° in all cases where they formally state a payment

received ; 2° where they contain an express mention that the entry has been made to make good a defect of the instrument in favour of the person in whose benefit they state an obligation.

Art. 1332

A writing made by a creditor at the end, in the margin or on the back of an instrument who has always remained in his possession, is evidence, although not signed or dated by him, where it tends to establish the discharge of the debtor.

It shall be likewise with a writing made by a creditor on the back, or in the margin, or at the end of the duplicate of an instrument or of a receipt, provided that duplicate is in the hands of the debtor.

§ 4 - Of Tallies

Art. 1333

Tallies corresponding to their samples are evidence between persons who are in the practice of thus establishing the supplies they furnish or receive in retail.

§ 5 - Of Copies of Instruments

Art. 1334

Where the original instrument is still extant, copies are evidence only of what is contained in the instrument, whose production may always be required.

Art. 1335

Where the original instrument no longer exists, copies are evidence according to the following distinctions:

1° Executory or first office copies are evidence as the original is: it shall be likewise with the copies which have been made under the authority of the court, the parties being present or duly summoned, or with those which have been made in the presence of the parties and by their mutual consent.

2° Copies which, without the authority of the court or without the consent of the parties and since the delivery of the executory or first office copies, have been made from the original of the instrument by the notaire who received it, or by one of his successors, or by public officers who, in such capacity, are depositaries of the originals, may, in case or loss of the original, be evidence when they are ancient.

They shall be deemed ancient where they are more than thirty years old.

Where they are less than thirty years old, they may only be used as a commencement of proof in writing.

3° Where the copies made from the original of an instrument were done by the notaire who received it, or by one of his successors, or by public officers who, in such capacity, are depositaries of the originals, they may be used, however ancient they may be, only as a commencement of proof in writing.

4° Copies of copies may, according to the circumstances, be considered as mere information.

Art. 1336

The registration of an instrument on public registers may only be used as a commencement of proof in writing; and even for that purpose it shall be necessary :

1° That it be certain that all the originals of the notaire, of the year in which the instrument appears to have been made, are lost, or that one proves that the loss of the original occurred through a particular accident;

2° That there exist an orderly list of the notaire, which establishes that the instrument was made at the same date.

Where, owing to the concurrence of these two circumstances oral evidence is admitted, those who were witnesses to the instrument shall be heard, if they are still alive .

§ 6 - Of Instruments of Recognition and of Confirmation

Art. 1337.-Instruments of recognition do not relieve from the production of the original instrument, unless its terms are specially stated therein.

What they may contain in addition to the original instrument, or what is different therein, has no effect.

Nevertheless, where there are several consistent recognitions, supported by possession, and of which one dates back thirty years, the creditor may be relieved from producing the original instrument.

Art. 1338

An instrument of confirmation or ratification of an obligation against which legislation allows an action for annulment or rescission is valid only where are found therein the gist of that obligation, mention of the ground of the action for rescission, and the intention to cure the defect upon which that action is based.

Failing an instrument of confirmation or ratification, it is sufficient that the obligation be performed voluntarily after the time when the obligation might be validly performed or ratified.

Confirmation, ratification, or voluntary performance in the forms and at the time determined by law, implies waiver of the grounds and exceptions which might be raised against that instrument, without prejudice however to the rights of third parties.

Art. 1339

A donor may not cure by any act of confirmation the defects of a gift inter vivos, void as to form: it must be remade in the form prescribed by law.

Art. 1340

Confirmation or ratification, or voluntary performance of a gift by the heirs or assigns of a donor, after his death, implies that they waive their right to raise either the defects in form or any other defences.

Section II - Of Oral Evidence

Art. 1341

(Act n° 80-525 of 12 July 1980)

An instrument before notaires or under private signature must be executed in all matters exceeding a sum or value fixed by decree1, even for voluntary deposits, and no proof by witness is allowed against or beyond the contents of instruments, or as to what is alleged to have been said before, at the time of, or after the instruments, although it is a question of a lesser sum or value.

All of which without prejudice to what is prescribed in the statutes relating to commerce.

1 D. n° 80-533 of 15 July 1980 : 5 000 F (800 €)

Art. 1342

(Act n° 80-525 of 12 July 1980)

The above rule shall apply where an action contains, in addition to a claim for capital, a claim for interest which, added to the capital, exceeds the figure provided for in the preceding Article.

Art. 1343

(Act n° 80-525 of 12 July 1980)

A person who has brought a claim exceeding the figure provided for in Article 1341 may no longer be allowed to produce oral evidence, even by reducing his original claim.

Art. 1344

(Act n° 80-525 of 12 July 1980)

Oral evidence may not be allowed on a claim for a sum even lesser than that which is provided for in Article 1341, where that sum is declared to be the balance or to form part of a larger claim which is not proved in writing.

Art. 1345

(Act n° 80-525 of 12 July 1980)

Where, in the same proceedings, a party asserts several claims for which he has no written instrument, and where, joined together, they exceed the sum provided for in Article 1341, oral evidence of them may not be allowed, although the party alleges that those claims come from different origins and that they were formed at different times, unless those rights are derived from succession, gift or otherwise, from different persons.

Art. 1346

All claims, whatever their ground may be, which are not fully justified in writing, shall be brought by the same process, after which the other claims of which there is no written evidence may not be received .

Art. 1347

The above rules are subject to exception where there exists a commencement of proof in writing.

Is so called any instrument in writing which emanates from the person against whom a claim is brought, or from the person he represents, and which makes probable the alleged fact.

(Act n° 75-596 of 9 July 1975) May be considered by the judge as equivalent to a commencement of proof in writing the declarations made by a party at the time of his personal examination, his refusal to answer or his absence at the examination .

Art. 1348

(Act n° 80-525 of 12 July 1980)

The above rules are also subject to exceptions where the obligation arises from a quasi-contract, an intentional or unintentional wrong, or where one of the parties either did not have the material or moral possibility to procure a written proof of a legal transaction, or has lost the instrument which served him as written proof in consequence of a fortuitous event or of force majeure.

They are also subject to exceptions where a party or a depositary has not kept the original instrument and presents a copy which is a reproduction that is not only faithful but also enduring. Is deemed enduring an indelible reproduction of the original which involves a non-reversible alteration of the medium.

Section III - Of Presumptions

Art. 1349

Presumptions are the consequences that a statute or the court draws from a known fact to an unknown fact.

§ 1 - Of Presumptions Established by Statute

Art. 1350

A statutory presumption is one which is attached by a special statute to certain transactions or to certain facts; such as:

1° The transactions which a statute declares void, as presumed made in fraud of its provisions, from their nature alone;

2° The cases in which a statute declares ownership or discharge to result from certain determined circumstances;

3° The authority which law gives to res judicata;

4° The force which law attaches to an admission of a party or to his oath.

Art. 1351

The force of res judicata takes place only with respect to what was the subject matter of a judgment. It is necessary that the thing claimed be the same; that the claim be based on the same grounds; that the claim be between the same parties and brought by them and against them in the same capacity.

Art. 1352

A statutory presumption dispenses from any proof him in whose favour it exists.

No proof is allowed against a statutory presumption, where, on the basis of such presumption, the law annuls certain transactions or denies a right of action, unless it reserves contrary evidence and subject to what will be said on judicial oath and admissions.

§ 2 - Of Presumptions Which are not Established by Statute

Art. 1353

The presumptions which are not established by a statute are left to the insight and carefulness of the judges, who shall only admit serious, precise and concurrent presumptions, and in the cases only where statutes admit oral evidence, unless a transaction is attacked for reason of fraud or deception.

Section IV - Of Admissions of a Party

Art. 1354

An admission which is set up against a party is either extra-judicial or judicial.

Art. 1355

An allegation of an extra-judicial admission which is purely verbal is useless whenever the claim is one in which oral evidence would not be admissible.

Art. 1356

A judicial admission is a declaration which a party or his special agent makes in court.

It is conclusive evidence against him who made it;

It may not be divided against him;

It may not be revoked, unless it is proved that it was the result of an error of fact. It might not be revoked under the pretext of an error of law.

Section V - Of Oaths

Art. 1357

A judicial oath is of two kinds :

1° The one which a party tenders to the other in order to make the judgment of the case depend upon it: it is called decisive ;

2° The one which is tendered by the judge of his own motion to one or another of the parties.

§ 1 - Of Decisive Oaths

Art. 1358

A decisive oath may be tendered in any kind of controversies whatsoever.

Art. 1359

It may be tendered only as to a fact which is personal to the party to whom it is tendered.

Art. 1360

It may be tendered at all stages of the case and although there exists no commencement of proof in writing of the claim or of the defence in relation to which it is instigated.

Art. 1361

A person to whom an oath is tendered, who refuses it or does not consent to tender it back to his opponent, or an opponent to whom it has been tendered back and who refuses it, shall be defeated in his claim or in his defence.

Art. 1362

An oath may not be tendered back where the fact to which it relates does not concern both parties, but is purely personal to the one to whom the oath was tendered.

Art. 1363

Where an oath tendered or tendered back has been taken, the opponent is not admitted to prove the falsity of it.

Art. 1364

The party who has tendered or tendered back an oath may no longer retract where the opponent has declared that he is ready to take the oath.

Art. 1365

An oath is evidence only for the benefit of the person who has tendered it or against him, and for the benefit of his heirs and assigns or against them.

Nevertheless an oath tendered by one of the joint and several creditors to a debtor discharges the latter only for the share of that creditor;

An oath tendered to a principal debtor discharges also the sureties;

The one tendered to one of the joint and several debtors benefits the co-debtors;

And the one tendered to a surety benefits the principal debtor.

In the last two cases, the oath of a joint and several co-debtor or of a surety benefits the other co-debtors or the principal debtor only where it has been tendered in connection with the debt, and not with the circumstance of the joint and several liability or of the security.

§ 2 - Of Oaths Tendered by a Judge of his Own Motion

Art. 1366

A judge may tender an oath to one of the party, in order either to make the decision of the case depend upon it, or only to fix the amount of the order.

Art. 1367

A judge may tender an oath of his own motion, with reference either to a claim or to a defence set up against it, only subject to the following two conditions; it is necessary:

1° That the claim or the defence be not fully substantiated;

2° That it be not wholly deprived of proof.

Outside those two cases, the judge must either admit or dismiss the claim outright.

Art. 1368

An oath tendered by the judge of his own motion to one of the parties may not be tendered back by that party to the other.

Art. 1369

An oath as to the value of a thing claimed may be tendered by the judge to the plaintiff only where it is otherwise impossible to establish that value.

Even in that case, the judge must determine the sum up to the amount of which the plaintiff shall be believed on his oath.

TITLE IV

OF UNDERTAKINGS FORMED WITHOUT AN AGREEMENT

Art. 1370

Certain undertakings are formed without the intervention of any agreement, either on the part of him who binds himself, or on the part of him towards whom he is bound.

Some of them result from the sole authority of legislation; others arise from an act personal to the one who is obligated.

The former are the undertakings formed involuntarily, such as those between neighbouring owners, or those of guardians and other administrators who may not refuse the duties which are imposed upon them.

Undertakings arising from an act personal to him who is bound result either from quasi-contracts, or from intentional or unintentional wrongs; they constitute the subject-matter of this Title .

CHAPTER I - OF QUASI-CONTRACTS

Art. 1371

Quasi-contracts are purely voluntary acts of man, from which there results some undertaking towards a third party, and sometimes a reciprocal undertaking of both parties.

Art. 1372

Where one voluntarily manages another’s business, whether the owner is aware of the management, or whether he is not, he who manages contracts a tacit undertaking to continue the management which he has embarked on, and to complete it until the owner is in a position to look after it himself; he must also take charge of all the continuations of that business.

He is then subject to all the obligations which would result from an express authority which the owner might have confided to him.

Art. 1373

He is bound to continue his management, although the owner happens to die before the business is achieved , until a heir is able to take over the business.

Art. 1374

He is bound to bring to the management of the business all the care of a prudent administrator.

Nevertheless, the circumstances which have led him to take the responsibility of the business may authorize the judge to restrain the damages which would result from the faults or negligent conduct of the manager.

Art. 1375

The owner whose business has been well managed must fulfil the undertakings which the manager has contracted in his name, indemnify him for all the personal undertakings into which he has entered and reimburse him for all the useful or necessary expenses which he has incurred.

Art. 1376

He who receives by error or knowingly what is not owed to him is bound to make restitution to the person from whom he has unduly received it.

Art. 1377

Where a person who, by error, believed himself to be the debtor, pays a debt, he has the right to recovery against the creditor.

Nevertheless, that right ceases where the creditor has cancelled his instrument of title in consequence of the payment, subject to the remedy of the person who has paid against the true debtor.

Art. 1378

Where there has been bad faith on the part of the person who received, he is bound to make restitution, of the capital as well as of interest or fruits, from the day of payment.

Art. 1379

Where the thing unduly received is an immovable or a tangible movable, the person who has received it binds himself to make restitution in kind, if it exists, or of its value, if it has perished or deteriorated through his fault; he is even guarantor of its loss by fortuitous event, if he received it in bad faith.

Art. 1380

Where the person who received in good faith has sold the thing, he must make restitution only of the proceeds of the sale.

Art. 1381

The person to whom a thing is restored must account, even to a possessor in bad faith, of all the necessary and useful expenses which have been incurred for the preservation of the thing.

CHAPTER II OF INTENTIONAL AND UNINTENTIONAL WRONGS

[OF TORTS]

Art. 1382

Any act whatever of man, which causes damage to another, obliges the one by whose fault it occurred, to compensate it.

Art. 1383

Everyone is liable for the damage he causes not only by his intentional act, but also by his negligent conduct or by his imprudence.

Art. 1384

A person is liable not only for the damages he causes by his own act, but also for that which is caused by the acts of persons for whom he is responsible, or by things which are in his custody.

(Act of 7 Nov. 1922) However, a person who possesses, regardless of the basis thereof, all or part of a building or of movable property in which a fire has originated is not liable

towards third parties for damages caused by that fire unless it is proved that the fire must be attributed to his fault of to the fault of persons for whom he is responsible.

(Act of 7 Nov. 1922) This provision may not apply to the landlord and tenant relationship, which remains governed by Articles 1733 and 1734 of the Civil Code.

(Act n° 70-459 of 4 June 1970) The father and mother, in so far as they exercise “parental authority” (Act n° 2002-305 of 4 March 2002), are jointly and severally liable for the damage caused by their minor children who live with them.

Masters and employers, for the damage caused by their servants and employees in the functions for which they have been employed;

Teachers and craftsmen, for the damage caused by their pupils and apprentices during the time when they are under their supervision.

(Act of 5 April 1937) The above liability exists, unless the father and mother or the craftsmen prove that they could not prevent the act which gives rise to that liability.

(Act of 5 April 1937) As to teachers, the faults, imprudence or negligent conducts invoked against them as having caused the damaging act must be proved by the plaintiff at the trial, in accordance with the general law.

Art. 1385

The owner of an animal, or the person using it, during the period of usage, is liable for the damage the animal has caused, whether the animal was under his custody, or whether it had strayed or escaped .

Art. 1386

The owner of a building is liable for the damage caused by its collapse, where it happens as a result of lack of maintenance or of a defect in its construction .

TITLE IV bis

OF LIABILITY FOR DEFECTIVE PRODUCTS

(Act n° 98-389 of 19 May 1998)

Art. 1386-1

A producer is liable for damages caused by a defect in his product, whether he was bound by a contract with the injured person or not.

Art. 1386-2

The provisions of this Title shall apply to a damage resulting from an injury to the person or to a property other than the defective product.

Art. 1386-3

A product is any movable, even though incorporated into an immovable, including the products of the soil, of stock-farming, of hunting and fishing. Electricity shall be deemed a product.

Art. 1386-4

A product is defective within the meaning of this Title where it does not provide the safety which a person is entitled to expect.

In order to appraise the safety which a person is entitled to expect, regard shall be had to all the circumstances and in particular to the presentation of the product, the use to which one could reasonably expect that it would be put, and the time when the product was put into circulation.

A product shall not be considered defective for the sole reason that a better product is subsequently put into circulation.

Art. 1386-5

A product is put into circulation when the producer has voluntarily parted with it.

A product is put into circulation only once.

Art. 1386-6

Is a producer, the manufacturer of a finished product, the producer of a raw material, the manufacturer of a component part, where he acts as a professional.

For the implementation of this Title, shall be treated in the same way as a producer any person acting as a professional:

1° Who presents himself as the producer by putting his name, trade mark or other distinguishing feature on the product;

2° Who imports a product into the European Community for sale, hire, with or without a promise of sale, or any other form of distribution.

Shall not be deemed producers, within the meaning of this Title, the persons whose liability may be sought on the basis of Articles 1792 to 1792-6 and 1646-1.

Art. 1386-7

A seller, a hirer, with the exception of a finance lessor or of a hirer similar to a finance lessor, or any other professional supplier is liable for the lack of safety of a product in the same conditions as a producer .

The remedy of a supplier against a producer is subject to the same rules as a claim brought by a direct victim of a defect. However, he must take action within the year following the date of his being summoned .

Art. 1386-8

In case of damage caused by a product incorporated into another, the producer of the component part and the one who has effected the incorporation are jointly and severally liable .

Art. 1386-9

The plaintiff is required to prove the damage, the defect and the causal relationship between defect and damage.

Art. 1386-10

A producer may be liable for a defect although the product was manufactured in accordance with the rules of the trade or of existing standards or although it was the subject of an administrative authorization.

Art. 1386-11

A producer is liable as of right unless he proves:

1° That he did not put the product into circulation;

2° That, having regard to the circumstances, it is probable that the defect which caused the damage did not exist at the time when the product was put into circulation by him or that this defect came into being afterwards;

3° That the product was not for the purpose of sale or of any other form of distribution;

4° That the state of scientific and technical knowledge, at the time when he put the product into circulation, was not such as to enable the existence of the defect to be discovered; or

5° That the defect is due to compliance with mandatory provisions of statutes or regulations.

The producer of a component part is not liable either where he proves that the defect is attributable to the design of the product in which the component has been fitted or to the directions given by the producer of that product.

Art. 1386-12

A producer may not invoke the exonerating circumstance provided for in Article 1386-11, 4°, where damage was caused by an element of the human body or by products thereof.

A producer may not invoke the exonerating circumstance provided for in Article 1386-11, 4° and 5°, where, faced with a defect which has revealed itself within a period of ten years after the product has been put into circulation, he did not take the appropriate steps to avoid its damaging consequences.

Art. 1386-13

The liability of a producer may be reduced or disallowed where, having regard to all the circumstances, the damage is caused both by a defect in the product and by the fault of the injured person or of a person for whom the injured person is responsible.

Art. 1386-14

The liability of a producer towards an injured person shall not be reduced where the act or omission of a third party contributed to the production of the damage.

Art. 1386-15

The clauses which tend to exempt from or to limit the liability for defective products are forbidden and shall be deemed not written.

Nevertheless, as to damages caused to property not used by the injured party mainly for his own private use or consumption, the clauses stipulated between professionals are valid .

Art. 1386-16

Except for fault of the producer, the liability of the latter, based on the provisions of this Title, shall be extinguished on the expiry of a period of ten years after the actual product which caused the damage was put into circulation, unless the injured person has in the meantime instituted proceedings.

Art. 1386-17

An action for the recovery of damages based on the provisions of this Title is time-barred after a period of three years from the date on which the plaintiff knew or ought to have known the damage, the defect and the identity of the producer.

Art. 1386-18

The provisions of this Title may not affect any rights which an injured person may have according to the rules of contractual or tort liability or of a special liability system.

A producer remains liable for the consequences of his fault or for that of the persons for whom he is responsible.

TITLE V

OF ANTE-NUPTIAL AGREEMENTS AND OF MATRIMONIAL REGIMES

(Act n° 65-570 of 13 July 1965)

CHAPTER I - GENERAL PROVISIONS

Art. 1387

Legislation regulates conjugal association, with respect to property, only in default of special agreements, which the spouses may enter into as they deem proper, provided they are not contrary to public morals and to the following provisions.

Art. 1388

Spouses may derogate neither to the duties and rights which result for them from marriage, nor to the rules of parental authority, statutory administration and guardianship.

Art. 1389

Without prejudice to gratuitous transfers which may take place according to the forms and in the cases provided for by this Code, spouses may not make any agreement or waiver whose object would be to change the statutory order of successions.

Art. 1390

They may, however, stipulate that, at the dissolution of the marriage by the death of one of them, the survivor will have the power to acquire or, should the occasion arise, to have allotted to him or her certain personal property of the first to die, on condition that he or she accounts for it to the succession, according to the value which they have on the day when that power is exercised.

Art. 1391

An ante-nuptial agreement shall determine the property to which the power granted to the survivor will relate. It may fix methods of appraisal and terms of payment, except abatement in favour of beneficiary heirs where there is an indirect advantage.

Taking into account those clauses and failing an agreement between the parties, the value of the property shall be fixed by the tribunal de grande instance .

Art. 1392

The power granted to the survivor lapses where he did not exercise it, by notice served upon the heirs of the predeceased, within a period of one month after the day when the latter gave him notice to come to a decision. That notice may not take place before the expiry of the period provided for in the Title Of Successions for making an inventory and deliberating .

Where served within that period, the notice generates a sale on the day when the power is exercised or, where appropriate, constitutes a process of partition.

Art. 1393

Spouses may declare, in a general way, that they intend to marry under one of the regimes provided for by this Code.

In the absence of special stipulations derogating from the community regime or modifying it, the rules established in the first Part of Chapter II shall constitute the ordinary law of France.

Art. 1394

All matrimonial agreements shall be drawn up in an instrument before notaire, in the presence and with the simultaneous consent of all the persons who are parties thereto or of their agents.

At the time of the signature of the agreement, the notaire shall deliver to the parties a certificate on unstamped paper and without costs, stating his name and place of residence, the names, first names, occupations and residences of the future spouses, as well as the date of the ante-nuptial agreement . That certificate shall state that it must be lodged with the officer of civil status before the celebration of the marriage .

Where the record of marriage mentions that an ante-nuptial agreement was not made, the spouses shall be, with regard to third parties, deemed married under the regime of general law, unless, in the transactions entered into with those third parties, they have declared that they made an ante-nuptial agreement.

(Act n° 94-126 of 11 Feb. 1994) In addition, where one of the spouses is a merchant at the time of the marriage or becomes so later, the ante-nuptial agreement and its amendments shall be given public notice, at his or her initiative and on his or her own responsibility, subject to the conditions and under the sanctions provided for by the provisions of statutes and regulations relating to the register of trade and companies.

Art. 1395

An ante-nuptial agreement must be drawn up before the celebration of the marriage and may take effect only on the day of that celebration.

Art. 1396

Amendments made in ante-nuptial agreements before the celebration of the marriage must be established by an instrument drawn up in the same forms. Furthermore, no change or counter-letter is valid without the presence and the simultaneous consent of all the persons who were parties to the ante-nuptial agreement, or of their agents.

Any amendments or counter-letters, even provided with the forms prescribed by the preceding Article, shall be without effect with respect to third parties, unless they were drawn up at the end of the original of the ante-nuptial agreement; and a notaire may deliver neither an executory nor an office copy of the ante-nuptial agreement without transcribing the amendment or counter-letter at the end.

After the celebration of the marriage, there may be no amendment to the matrimonial regime except by the effect of a judgment, either on the application of one of the spouses, in the case of separation of property or of other judicial protective measures, or on joint petition of both spouses, in the case of the following Article.

Art. 1397

After two years of application of a matrimonial regime, either conventional or statutory, the spouses may agree in the interest of the family to amend it or even to change it entirely, by a notarial instrument, which shall be submitted to the approval of the court of their domicile.

All persons who were parties to the modified agreement shall be summoned in the proceedings in approval; but not their heirs, if they have died.

An approved change has effect between the parties from the judgment and, with regard to third parties, three months after mention of it has been entered in the margin of both copies of the record of marriage. However, even failing that mention, an amendment is effective against third parties where, in the transactions entered into with them, the spouses have declared that they have amended their matrimonial regime;

Mention of the judgment of approval shall be made on the original of the amended ante-nuptial agreement .

The application and the decision of approval shall be published on the terms and subject to the penalties provided for in the Code of Civil Procedure; furthermore, where one of the spouses is a merchant, the decision shall be published on the terms and subject to the penalties provided for by the regulations relating to the commercial register.

Where there has been a fraud on their rights, creditors may resort to a third party application for revocation of the judgment of approval in the way provided for in the Code of Civil Procedure.

Art. 1397-1

(Act n° 75-617 of 11 July 1975).-The provisions of the preceding Article shall not apply to the agreements entered into by spouses in the course of divorce proceedings with the view of liquidating their matrimonial regime.

Articles 1450 and 1451 shall apply to those agreements.

Art. 1397-2

(Act n° 97-987 of 28 Oct. 1997)

Where spouses specify the law applicable to their matrimonial regime under the Convention on the law applicable to matrimonial regimes, made in The Hague on 14 March 1978, Articles 1397-3 and 1397-4 shall apply.

Art. 1397-3

(Act n° 97-987 of 28 Oct. 1997)

Where the specification of the applicable law is made before the marriage, the future spouses shall present to the officer of civil status either the instrument through which they have operated that specification, or a certificate delivered by the competent person to establish that instrument. A certificate shall state the names and first names of the future spouses, the place where they are living, the date of the instrument of specification, as well as the names, qualifications and residence of the person who has established it.

Where the specification of the applicable law is made in the course of a marriage, the spouses shall have the measures or public notice relating to the specification of the applicable law made subject to the conditions and forms provided for in the new Code of Civil Procedure.

On the occasion of the specification of the applicable law, before the marriage or in its course, the spouses may specify the nature of the matrimonial regime they choose.

Where one of the spouses is a merchant at the time of the marriage or becomes so afterwards, the instrument of specification of the applicable law, drawn up before the marriage or in its course shall be given public notice on the terms and subject to the penalties provided for by the provisions relating to the register of commerce and companies.

Art. 1397-4

(Act n° 97-987 of 28 Oct. 1997)

Where the specification of the applicable law is made in the course of a marriage, that specification takes effect between the parties from the establishment of the instrument of specification and, with respect to third parties, three months after the formalities of public notice provided for in Article 1397-3 have been fulfilled.

However, even failing fulfilment of those formalities, the specification of the applicable law is effective against third parties where, in the transactions entered into with them, the spouses have declared which law is applicable to their matrimonial regime.

Art. 1397-5

(Act n° 97-987 of 28 Oct. 1997)

Where a change in the matrimonial regime takes place in accordance with a foreign law which governs the effects of the marriage, the spouses shall have public notice made as provided for in the new Code of Civil Procedure.

Art. 1397-6

(Act n° 97-987 of 28 Oct. 1997)

A change of matrimonial regime takes effect between the parties from the judgment or from the instrument which provides for it and, with respect to third parties, three months after the formalities of notice provided for in Article 1397-5 have been fulfilled.

However, even failing fulfilment of those formalities, the change of matrimonial regime is effective against third parties where, in the transactions entered into with them, the spouses have declared that they have amended their matrimonial regime.

Art. 1398

A minor having capacity to contract marriage has capacity to consent to all the agreements of which that contract is susceptible and the agreements and gifts he has made therein are valid, provided he had, in making the agreement, the assistance of all the persons whose consent is necessary for the validity of the marriage.

Where matrimonial conventions have been entered into without that assistance, the annulment thereof may be sued for by the minor or by the persons whose consent was required, but only up to the expiry of the year following the coming of age.

Art. 1399

An adult in guardianship or curatorship may not enter into matrimonial conventions unless assisted, at the contract, by those who must consent to his marriage.

Failing that assistance, annulment of the agreements may be sought within the year of the marriage, either by the person under a disability himself, or by those whose consent was required, or by the guardian or the curator.

CHAPTER II – OF THE REGIME OF COMMUNITY OF PROPERTY

PART I – OF THE STATUTORY COMMUNITY OF PROPERTY

Art. 1400

Community of property which is established failing an agreement or by a simple declaration of being married under the community of property regime, is subject to the rules explained in the following three Sections.

Section I – Of What a Community is Composed as to Assets and Liabilities

§ 1 - Of the Assets of the Community

Art. 1401

The assets of the community comprise acquisitions made by the spouses together or separately during the marriage, and coming both from their personal activity and from savings made on the fruits and incomes of their personal property.

Art. 1402

Any property, movable or immovable, shall be deemed an acquisition of the community where it is not proved that it is a separate property of one of the spouses in accordance with a provision of law.

Where a property is one of those which do not display proof or mark of their origin, personal ownership of a spouse, if disputed, shall be established in writing. Failing an inventory or other contemporaneously constituted proof, the judge may take into consideration all writings, in particular family instruments of title, registers and papers, as well as bank documents and invoices. He may even admit testimonial or presumptive evidence, where he observes that it was materially or morally impossible for one spouse to obtain a writing.

Art. 1403

Each spouse retains full ownership of his or her separate property.

The community is entitled only to fruits collected and not consumed. But a reimbursement may be due to it, at the time of the dissolution of the community, for fruits which a spouse failed to collect or has fraudulently consumed, without, however, any inquiry being admissible further than the last five years.

Art. 1404

Constitute separate property by their nature, even where they have been acquired during the marriage, clothes and belongings for the personal use of one of the spouses, actions for compensation for bodily or moral harm, inalienable claims and pensions, and, more generally, all property which has a personal character and all rights exclusively attached to the person.

Constitute also separate property by their nature, but subject to a reimbursement if there is occasion, implements necessary to the occupation of one of the spouses, unless they are accessory to business assets or to an enterprise forming part of the community.

Art. 1405

Remain separate property the items of property of which the spouses had ownership or possession on the day of the celebration of the marriage, or which they acquire, during the marriage, through succession, gift or legacy.

A gratuitous transfer may stipulate that the property which is its subject-matter will belong to the community. Property falls into community, unless otherwise stipulated, where a gratuitous transfer is made jointly to both spouses.

Property surrendered or transferred by the father, mother or other ascendant to one of the spouses, either in order to discharge what he owes to him or her, or under the obligation of paying debts of the donor to outsiders, remain separate property, subject to reimbursement.

Art. 1406

Constitute separate property, subject to reimbursement if there is occasion, property acquired as accessory to a separate property as well as new securities and other increases connected with securities which are separate property.

Constitute also separate property, through the effect of real subrogation, claims and indemnities which take the place of separate property, as well as property acquired in investment or reinvestment, in accordance with Articles 1434 and 1435.

Art. 1407

Property acquired in exchange for a property which belonged separately to one of the spouses is itself separate property, subject to reimbursement due to the community or by it, where there is a balance.

However, where the balance charged to the community is greater than the value of the transferred property, the property acquired in exchange falls into the common stock, subject to reimbursement for the benefit of the transferor.

Art. 1408

An acquisition, made by auction or otherwise, of a part of a property of which one of the spouses was an undivided owner, does not constitute an acquisition, subject to the reimbursement due to the community for the sum it may have supplied.

§ 2 - Of the Liabilities of the Community

Art. 1409

(Act n° 85-1372 of 23 Dec. 1985)

The liabilities of the community comprise:

- definitively, maintenance due by the spouses and debts incurred by them for the support of the household and the education of children, under Article 220;

- definitively or subject to reimbursement, according to the circumstances, other debts arising during the community.

Art. 1410

Debts which the spouses owed on the day of the celebration of the marriage, or with which the successions and gratuitous transfers falling to them during the marriage are burdened, remain personal to them, both as to capital and to arrears or interest.

Art. 1411

In the case of the preceding Article, creditors of either spouse may only enforce payment on the separate property “and the income” (Act n° 85-1372 of 23 Dec. 1985) of their debtor.

They may also, however, seize property of the community where the movables which belonged to their debtor on the day of the marriage or which fell to him by succession or gratuitous transfer have been merged into the common patrimony and can no longer be identified under the rules of Article 1402.

Art. 1412

Reimbursement is due to the community which has paid a personal debt of a spouse.

Art. 1413

(Act n° 85-1372 of 23 Dec. 1985).-Payment of debts which either spouse owes, for whatever reason, during the community, may always be enforced on community property, unless there was fraud of the debtor spouse and bad faith of the creditor, and subject to reimbursement due to the community, if there is occasion.

Art. 1414

(Act n° 85-1372 of 23 Dec. 1985)

The earnings and wages of a spouse may be attached by the creditors of his or her spouse only where the obligation was contracted for the support of the household or the education of children, under Article 220.

Where the earnings and wages are paid into a current or deposit account, the latter may be attached only under the conditions determined by decree.

Art. 1415

(Act n° 85-1372 of 23 Dec. 1985)

Each spouse may obligate only his separate property and his income, by surety or loan, unless they have been contracted with the express consent of the other spouse, who, in that case, does not obligate his separate property.

Art. 1416

A community which has discharged a debt for which it may have been sued under the preceding Articles, is nevertheless entitled to reimbursement, whenever that undertaking had been contracted in the personal interest of one of the spouses, for example for the acquisition, preservation or improvement of a separate property.

Art. 1417

A community is entitled to reimbursement, deduction being made, if there is occasion, of the benefit derived for it, where it paid fines incurred by one spouse by reasons of criminal offences, or damages and costs for which he or she had been held liable in tort.

It is likewise entitled to reimbursement where the debt which it discharged was contracted by one of the spouses in contempt of the duties which the marriage prescribed to him or her.

Art. 1418

Where a debt has become a community debt in only one spouse's right, it may not be enforced on the separate property of the other.

Where it is joint and several, a debt is deemed to become a community debt in both spouses' right. [repealed]

Art. 1419 and 1420. [repealed]

Section II – Of the Administration of the Community and of the Separate Property

Art. 1421

(Act n° 85-1372 of 23 Dec. 1985)

Each spouse has the power to administer alone the common property and to dispose of it, subject to being accountable for faults committed in his or her management. Transactions entered into without fraud by a spouse are enforceable against the other.

A spouse who follows a separate profession, has alone the power to perform acts of administration and disposition necessary for it.

All of which is subject to Articles 1422 to 1425.

Art. 1422

(Act n° 85-1372 of 23 Dec. 1985)

One spouse may not, without the other, dispose inter vivos, gratuitously, of the common property.

Art. 1423

(Act n° 85-1372 of 23 Dec. 1985).-A legacy made by one spouse may not exceed his or her share in the community.

Where a spouse has bequeathed a property of the community, the legatee may claim it in kind only if, by the effect of partition, the property falls into the share of the testator’s heirs; if the property does not fall into the share of those heirs, the legatee is entitled to reimbursement of the total value of the property bequeathed, on the share, in the community, of the heirs of the testator spouse and on the separate property of the latter.

Art. 1424

(Act n° 85-1372 of 23 Dec. 1985)

One spouse may not, without the other, transfer or encumber with rights in rem immovables, business assets and enterprises depending on the community, or non-negotiable rights in a firm and tangible movables whose alienation requires public notice. One spouse may not, without the other, collect the capital coming from those operations.

Art. 1425

(Act n° 85-1372 of 23 Dec. 1985)

One spouse may not, without the other, give on lease a rural tenement or an immovable for commercial, industrial or craft use depending on the community. Other leases on common property may be entered into by one spouse alone and are subject to the rules provided for regarding leases made by a usufructuary.

Art. 1426

(Act n° 85-1372 of 23 Dec. 1985)

Where one of the spouses is, in an enduring way, unable to express his or her wish, or if his or her management of the community reveals unfitness or fraud, the other spouse may request in court to be substituted for him or her in the exercise of those powers. The provisions of Articles 1445 to 1447 shall apply to that request.

A spouse thus entitled by court has the same powers which the spouse whom he or she replaces would have had; he or she may, with the authorization of the court, enter into transactions for which his or her consent would have been required if a substitution had not taken place.

A spouse deprived of his or her powers may, later on, request their restitution to the court, by establishing that their transfer to the other spouse is no longer justified.

Art. 1427

(Act n° 85-1372 of 23 Dec. 1985)

Where one of the spouses has gone beyond his or her powers on common property, the other may apply for annulment of it, unless he has ratified the transaction.

An action for annulment may be brought by the spouse during two years after the day when he had knowledge of the transaction, without never being admissible more that two years after the dissolution of the community.

Art. 1428

Each spouse has the administration and enjoyment of his or her separate property and may dispose of it freely.

Art.1429.

-Where one of the spouses is, in an enduring way, unable to express his or her wish, or if he or she imperils the interests of the family, either by allowing his or her separate property to waste away or by dissipating or embezzling the income withdrawn from them, he or she may, on application of the other spouse, be divested of the rights of administration and enjoyment attributed by the preceding Article. The provisions of Article 1445 to 1447 shall apply to that application.

Unless the appointment of a judicial administrator appears necessary, the judgment shall grant to the plaintiff spouse the power to administer the separate property of the divested spouse, as well as to collect the fruits thereof, which shall be appropriated to the marriage expenses and the excess used for the benefit of the community.

From the application, the deprived spouse may dispose alone of the bare ownership of his or her property only.

He or she may, later on, request the restitution of his or her rights to the court, if he or she establishes that the causes which had justified the divesting no longer exist.

Art. 1430 [repealed]

Art. 1431

Where, during the marriage, one of the spouses grants to the other the administration of his or her separate property, the rules of agency shall apply. The agent spouse is, however, dispensed from accounting for fruits, where the power of attorney does not expressly so require.

Art. 1432

Where one of the spouses takes in hand the management of the separate property of the other, with the knowledge of the latter but nevertheless without opposition on his or her part, there is deemed to be an implied agency, with authority to make acts of administration and enjoyment, but not acts of disposition.

That spouse shall be responsible for his or her management towards the other as would an agent. However, he or she must account only for existing fruits; as regards those which he or she failed to collect or fraudulently consumed, he or she may be sued only within a limitation of the last five years.

Where one of the spouses has interfered in the management of the separate property of the other in contempt of an established opposition, he or she is liable for all the results of his or her interference and accountable without limitation for all the fruits which he or she has collected, failed to collect or fraudulently consumed.

Art. 1433

The community owes reimbursement to the owner spouse whenever it has drawn benefit from separate property.

It shall be so, notably, where it has collected funds which were separate property or which came from the sale of a separate property, without there having been made investment or re-investment.

Where a controversy arises, proof that community drew benefit from separate property may be adduced by any means, including testimony and presumptions.

Art. 1434

Investment or re-investment is deemed made with regard to a spouse, whenever, at the time of an acquisition, it is declared that it was made from separate funds, or from funds coming from the disposal of a separate property, and in order to take its place as investment or re-

investment. Failing such declaration in the instrument, investment or re-investment takes place only through agreement of the spouses and produces effect only in their reciprocal relationships.

[repealed]

Art. 1435

(Act n° 85-1372 of 23 Dec. 1985)

Where investment or re-investment is made in anticipation, the property acquired is separate, provided that the sums expected from the separate patrimony be paid to the community within five years after the date of the transaction.

Art. 1436

(Act n° 85-1372 of 23 Dec. 1985)

Where the price and expenses of the acquisition exceed the sum from which investment or re-investment was made, the community is entitled to reimbursement for the excess. Where, however, the share of the community is greater than that of the acquiring spouse, the property acquired falls into community, subject to reimbursement due to the spouse.

Art. 1437

Whenever a sum is taken from the community, either to discharge the personal debts or charges of one of the spouses, such as the price or part of the price of a separate property of his or her own, or the redemption of land services, or for the recovery, preservation or improvement of his or her personal property, and generally whenever one of the two spouses draws a personal profit from the community property, he or she owes reimbursement therefor.

Art. 1438

Where the father and mother jointly make a gift in favour of a common child without specifying the portion for which they intended to contribute thereto, they are deemed to have contributed each for one half, whether the gift was provided or promised from community property, or whether from personal property of one of the spouses.

In the second case, the spouse from whose personal property the gift was made has, on the property of the other, an action for compensation for half of the said gift, having regard to the value of the property donated at the time of the gift.

Art. 1439

A gift made to a common child from community property is charged to the community.

(Act n° 85-1372 of 23 Dec. 1985) It is borne by each spouse for one half on the dissolution of the community, unless one of them, in making it, expressly declared that he or she would take charge of it for the whole or for a share exceeding one half.

Art. 1440

Warranty of the gift is due from any person who made it; and interest runs as from the day of the marriage, although there is a term for the payment, unless otherwise stipulated.

Section III – Of the Dissolution of the Community

§ 1 - Of the Causes for Dissolution and of Separation of Property

Art. 1441

A community is dissolved:

1° By the death of one of the spouses;

2° “By declared absence” (Act n° 77-1447 of 28 Dec. 1977);

3° By divorce;

4° By judicial separation;

5° By separation of property;

6° By change of matrimonial regime.

Art. 1442

(Act n° 85-1372 of 23 Dec. 1985)

No continuance of a community may take place, notwithstanding any agreement to the contrary.

Either spouse may request, if there is occasion, that, in their mutual relations, the effect of the dissolution be carried back to the date when they ceased to live together and collaborate. The one upon whom the wrongs of separation chiefly fall may not obtain that carrying back .

Art. 1443

Where through the disorder of the affairs, misadministration or misconduct of one spouse, it appears that the upholding of the community imperils the interest of the other spouse, the latter may sue in court for separation of property.

Any voluntary separation is void.

Art. 1444

Separation of property, although ordered in court, is void where the proceedings tending to liquidate the rights of the parties have not be initiated within three months after the judgment has become res judicata or where the final settlement has not occurred within the year of the opening of the process of liquidation. The period of one year may be extended by the president of the court in the form of interim relief proceedings.

Art. 1445

The application and judgment of separation of property shall be given public notice on the terms and subject to the penalties provided for by the Code of Civil Procedure, as well as by the regulations relating to commerce where one of the spouses is a merchant.

A judgment ordering a separation of property extends back as to its effect to the day of the application.

Mention of the judgment shall be made in the margin of the record of marriage as well as on the original of the ante-nuptial agreement.

Art. 1446

Creditors of a spouse may not apply for a separation of property in his or her right.

Art. 1447

Where an action for separation of property has been brought, creditors may demand from the spouses, by paper served in the courthouse, to have the application and supporting documents communicated to them. They may even intervene in the case for the preservation of their rights.

Where separation has been ordered in fraud of their rights, they may appeal against it by way of third party application for revocation of judgment, under the conditions provided for in the Code of Civil Procedure.

Art. 1448

The spouse who has obtained the separation of property shall contribute, in proportion to his or her means and to those of the other spouse, both to the household expenses and to those relating to the education of children.

He or she shall bear entirely those expenses, where nothing is left to the other.

Art. 1449

A separation of property judicially ordered has the effect of putting the spouses under the regime of Articles 1536 and following.

(Act n° 85-1372 of 23 Dec. 1985) The court, where it pronounces separation, may order that one of the spouses shall pay his or her contribution into the hands of the other spouse, who shall assume alone thenceforth with regard to third parties the payment of all the liabilities of the marriage.

Art. 1450

(Act n° 75-617 of 11 July 1975)

During divorce proceedings, spouses may enter into any agreements for the liquidation and partition of the community.

Those agreements shall be made through a notarial instrument, except in case of joint petition.

Art. 1451

(Act n° 75-617 of 11 July 1975)

The agreements thus entered into are suspended, with regard to their effects, until the pronouncement of the divorce; they may be enforced, even in the relations between spouses, only where the judgment has gained force of res judicata.

One of the spouses may request that the judgment of divorce modify the agreement where the consequences of divorce fixed by that judgment call into question the bases of the liquidation and partition.

Art. 1452 to 1466 [repealed]

§ 2 - Of Liquidation and Partition of the Community

Art. 1467

After the dissolution of the community, each spouse shall retake that of his or her property which did not fall into the community, where it exists in kind, or the property subrogated thereto.

Then shall take place the liquidation of the common stock, as to assets and liabilities.

Art. 1468

Shall be established in the name of each spouse an account of the reimbursement which the community owes to him or her and of the reimbursement which he or she owes to the community, in accordance with the rules prescribed in the preceding Sections.

Art. 1469

Reimbursement shall be, in general, equal to the smaller of the two sums which the expenditures made and the profit still extant represent.

However, it may not be less than the expenditure made where the latter was necessary.

(Act n° 85-1372 of 23 Dec. 1985) It may not be less than the profit still extant where the value borrowed was used to acquire, preserve or improve a property which is found, on the day of the liquidation of the community, in the borrower patrimony. Where the property acquired, preserved or improved has been alienated before the liquidation, the profit shall be appraised on the day of the alienation; where a new property has been subrogated to the alienated property, the profit shall be appraised with regard to that new property.

Art. 1470

Where, after the balance is made, the account presents a residue in favour of the community, the spouse shall return the amount thereof to the common stock.

Where it presents a residue in favour of a spouse, the latter has the option either to require payment or to appropriate common property up to the amount due.

Art. 1471

(Act n° 85-1372 of 23 Dec. 1985)

Appropriations shall be enforced first on ready money, next on the movables and subsidiarily on the immovables of the community. A spouse who makes the appropriation is entitled to choose the movables and immovables which he or she appropriates. He or she may not, however, prejudice by that option the rights which the other spouse may have to request the continuation of the undivided property or the preferential allotment of certain items of property.

Where the spouses wish to appropriate the same property, one shall proceed by drawing lots.

Art. 1472

(Act n° 85-1372 of 23 Dec. 1985)

In case the community is not adequate, the appropriations of each spouse shall be in proportion to the amount of the reimbursement which are due to him or her.

However, where the inadequacy of the community is imputable to the fault of one of the spouses, the other spouse may make appropriation before him or her on the whole of common property; he or she may make them subsidiarily on the separate property of the liable spouse.

Art. 1473

Reimbursement due by the community or to the community bears interest by operation of law from the day of the dissolution.

(Act n° 85-1372 of 23 Dec. 1985) However, where a reimbursement is equal to the profit still extant, interest runs from the day of liquidation.

Art. 1474

Appropriations in common property constitute an operation of partition. They do not confer on the spouse who enforces them any right to be preferred to the creditors of the community, except the priority resulting from legal mortgage, where there is occasion.

Art. 1475

After all appropriations have been carried out on the stock, the excess shall be divided by halves between the spouses.

Where an immovable of the community is an annex of another immovable belonging separately to one of the spouses, or where it is contiguous to that building, the owner spouse has the power to have it allotted to him or her by deduction from his or her share or subject to a balance, according to the value of the property on the day when allotment is requested.

Art. 1476

Partition of a community, as to everything relating to its forms, continuation of undivided ownership and preferential allotment, auction of property, effects of partition, warranty and balances is subject to all the rules established in the Title Of Successions with respect to partitions between coheirs.

However, as to communities dissolved by divorce, judicial separation or separation of property, preferential allotment is never as of right, and it may always be ordered that the whole of a balance which may be due shall be payable cash.

Art. 1477

The spouse who has diverted or concealed any articles of the community, shall be deprived of his or her share in said articles.

Art. 1478

After a partition is closed, where one of the spouses is the personal creditor of the other, for instance because the proceeds of his or her property have been used to pay a personal debt of the other spouse, or for any other cause, he or she may enforce the claim against the share of the community coming to the other or against the other’s separate property.

Art. 1479

The personal claims which the spouses have to enforce against each other do not give rise to appropriation and bear interest only from the day of the demand.

(Act n° 85-1372 of 23 Dec. 1985) Unless otherwise agreed by the parties, they shall be appraised according to the rules of Article 1469, paragraph 3, in the cases for which it provides; interest then runs from the day of the liquidation.

Art. 1480

Gifts which one of the spouses may have made to the other shall be enforced only on the share of the donor in the community and on his or her separate property.

Art. 1481 [repealed]

§ 3 - Obligation and of Contribution to Liabilities after Dissolution

Art. 1482

(Act n° 85-1372 of 23 Dec. 1985)

Each spouse may be sued for the whole of the debts existing on the day of dissolution, which had entered into the community in his or her own right.

Art. 1483

Each spouse may be sued only for half of the debts which had entered into the community in the other spouse’s right.

(Act n° 85-1372 of 23 Dec. 1985) After partition, and save the case of concealment, he or she is liable for them only up to the share of the assets which he or she receives, provided there was an inventory, and under the obligation to account both for the contents of that inventory and for what he or she has received through the partition, as well as for the common liabilities already discharged.

Art. 1484

The inventory provided for in the preceding Article shall be made in the forms regulated by the Code of Civil Procedure, adversarily with the other spouse or the latter having been duly summoned. It shall be closed within nine months after the day when the community was dissolved, except for extension of time granted by an interim relief judge. It shall be asserted genuine and true before the public officer who received it.

Art. 1485

Each spouse shall contribute by halves to the community debts for which a reimbursement was not due, as well as to the costs of sealing, inventory, sale of movables, liquidation, auction and partition.

He or she bears alone the debts which had become common only subject to reimbursement chargeable to him or her.

Art. 1486

The spouse who may take advantage of the benefit of Article 1483, paragraph 2, does not contribute for more than the share of the assets which he or she receives to the debts which had entered into the community in the other spouse’s right, unless it is a question of debts for which he or she owed reimbursement.

Art. 1487

The spouse who paid above the portion for which he or she was liable under the preceding Articles has a remedy for the excess against the other.

Art. 1488

He or she has not, for that excess, any recovery against the creditor, unless the receipt states that he or she intends to pay only within the limit of his or her obligation.

Art. 1489

The spouse who, by the effect of a mortgage enforced on an immovable which he received in partition, is sued for the whole of a community debt has as of right a remedy against the other for half of that debt.

Art. 1490

The provisions of the preceding Articles are not a bar to a clause of the partition which, without prejudicing the rights of third parties, obliges either spouse to pay a portion of the debts other than that which is fixed above, or even to discharge the liabilities in full.

Art. 1491.

-The heirs of the spouses exercise, in case of dissolution of the community, the same rights as the spouse whom they represent and are subject to the same obligations. [repealed]

Art. 1492 to 1496 [repealed]

PART II – OF CONVENTIONAL COMMUNITY

Art. 1497

Spouses may, in their ante-nuptial agreement, modify statutory community by any kinds of agreement not contrary to Article 1387, 1388 and 1389.

They may, especially, agree:

1° That the community shall include movables and acquisitions;

2° That it will be derogated to the rules relating to administration;

3° That one of the spouse will have the power to appropriate certain property on condition of an indemnity;

4° That one of the spouses will have an appropriation clause;

5° That the spouses will have unequal shares;

6° That there will be a universal community between them.

The rules on statutory community shall remain applicable on all questions which have not been the subject of the agreement of the parties.

Section I – Of the Community of Movables and Acquisitions

Art. 1498

Where spouses agree that there will be between them a community of movables and acquisitions, the common assets comprise, in addition to property which would form part of it under the regime of statutory community, the movable property of which the spouses had ownership or possession on the day of the marriage or which has fallen to them afterwards through succession or gratuitous transfer, unless the donor or testator has stipulated the contrary.

Remains separate property, nevertheless, that of the movable property which would have formed separate property by its nature by virtue of Article 1404, under the statutory regime, if it had been acquired during the community.

Where one of the spouses acquires an immovable after the ante-nuptial agreement, which contained a stipulation of community of movables and acquisitions, and before the celebration of the marriage, the immovable acquired during that interval enters the community, unless the acquisition was made in performance of some clause of the ante-nuptial agreement, in which case it is regulated according to the agreement.

Art. 1499

Form part of the liabilities of the community, under that regime, other than the debts which would form part of it under the statutory regime, a fraction of those with which the

spouses were already burdened when they married, or with which successions and gratuitous transfer which fall to them during the marriage are burdened.

The fraction of liabilities which the community bears is proportionate to the fraction of assets which it receives, according to the rules of the preceding Article, either from the patrimony of the spouse on the day of the marriage, or from the whole of property which is the subject of the succession or gratuitous transfer.

In order to establish that proportion, the consistency and value of the assets shall be proved in accordance with Article 1402.

Art. 1500

The debts to which the community is liable, as a counterpart of the property it receives, are its final responsibility.

Art. 1501

The apportionment of liabilities prior to the marriage or burdening successions and gratuitous transfers may not prejudice the creditors. They keep, in all cases, the right to seize property which previously constituted their security. They may even enforce their payment against the whole of the community, where the movable property of their debtor has been merged into the common patrimony and may no longer be identified under the rules of Article 1402.

Art. 1502 [repealed]

Section II – Of the Clause of Joint Administration

Art. 1503

(Act n° 85-1372 of 23 Dec. 1985)

Spouses may agree that they will administer jointly the community.

In that case, the acts of administration and of disposition of community property shall be made under the joint signature of both spouses, and they involve as of right joint and several liability of the spouses.

Acts of preservation may be done separately by each spouse.

Art. 1504 to 1510 [repealed by implication]

Section III – Of the Clause of Appropriation on Condition of Indemnity

Art. 1511

Spouses may stipulate that the survivor or one of them if he or she survives, or even one of them in all the cases of dissolution of the community, will have the power to appropriate certain common property, with the responsibility of accounting for it to the community according to the value it has on the day of partition, unless otherwise agreed.

Art. 1512

An ante-nuptial agreement may fix the bases of appraisal and the terms of payment of a possible balance. Having regard to those clauses and failing an agreement between the parties, the value of that property shall be fixed by the tribunal de grande instance.

Art. 1513

A power of appropriation lapses where the benefiting spouse does not exercise it by notice served upon the other spouse or his or her heirs within a period of one month after the day when the latter have served upon him or her notice to come to a decision. That notice may not itself be served before the expiry of the period provided for in the Title Of Successions for making an inventory and deliberating.

Art. 1514

Appropriation is an operation of partition: property appropriated is deduced from the share of the benefiting spouse; where its value exceeds that share, there is occasion for payment of a balance.

Spouses may agree that the indemnity owed by the maker of an appropriation will be deduced subsidiarily from his or her rights in the succession of the predeceased spouse.

Section IV – Of the Appropriation Clause

Art. 1515

It may be agreed in an ante-nuptial agreement, that the survivor of the spouses, or one of them if he or she survives, will be authorized to appropriate from the common stock, before any partition, either a specified sum, or a specified property in kind, or a specified quantity of a determined kind of property.

Art. 1516

Appropriation is not considered as a gift, either as to substance, or as to form, but as a agreement relating to marriage and between partners.

Art. 1517 [repealed]

Art. 1518

(Act n° 85-1372 of 23 Dec. 1985)

Where community is dissolved in the lifetime of the spouses, there is no occasion for the making of an appropriation; but the spouse, to whose benefit it was stipulated, keeps his or her right for the case of survival, unless matrimonial advantages have been lost as of right or revoked following a divorce or judicial separation order, without prejudice to the application of Article 268. He or she may require surety from the other spouse in warranty of those rights.

Art. 1519

Creditors of the community are always entitled to have the articles appropriated sold, subject to the remedy of the spouse against the remainder of the community.

Section V – Of the Stipulation of Unequal Shares

Art. 1520

Spouses may derogate from the partition established by law.

Art. 1521

Where it has been stipulated that a spouse and his or her heirs will have only a certain share in the community, such as a third or a fourth, the spouse thus limited or his or her heirs are liable for the debts of the community only in proportion to the share which they take from the assets.

The agreement is void where it compels the spouse thus limited or his or her heirs to bear a larger part, or where it exempts them from bearing a share of the debts equal to that which they take from the assets.

Art. 1522 and 1523 [repealed]

Art. 1524

Allotment of the entire community may be agreed only for the case of survival, either for the benefit of a specified spouse, or for the benefit of whoever survives. The spouse who thus retains the whole of the community is obliged to pay all its debts.

It may also be agreed, for the case of survival, that one of the spouses will have, in addition to his or her half, the usufruct of the predeceased's share. In that case, he or she shall contribute to the debts, as to the usufruct, according to the rules of Article 612.

The provisions of Article 1518 shall apply to those clauses when the community is dissolved in the lifetime of the two spouses.

Art. 1525

A stipulation of unequal shares and a clause of full allotment are not deemed a gift, neither as to substance nor as to form, but simply agreements relating to marriage and between partners.

Unless otherwise stipulated, they may not prevent the heirs of the predeceased spouse to take back the contributions and capital having fallen into the community in the right of their predecessor in title.

Section VI – Of Universal Community

Art. 1526

Spouses may by their ante-nuptial agreement establish a universal community of their property, movable and immovable, present and future. However, unless otherwise stipulated, property which Article 1404 declares separate by its nature does no fall into that community.

A universal community bears definitively all the debts of the spouses, present and future.

PROVISIONS COMMON TO THE TWO PARTS OF CHAPTER II

Art. 1527

The advantages which either spouse may draw from the clauses of a conventional community, as well as those which may result from a mingling of movables or of debts, are not deemed gifts.

(Act n° 2001-1135 of 3 Dec. 2001) However, in the case where there are children who are not born of the two spouses, any agreement having the consequence of donating to one of the spouses beyond the portion regulated by Article 1094-1, in the Title Of Gifts Inter Vivos and of Wills is ineffective as to the whole excess; but mere gains resulting from common business and from savings made out of the respective although unequal incomes of both spouses are not considered as an advantage made to the prejudice of the children of another bed.

Art. 1528 to 1535 [repealed]

CHAPTER III - OF THE REGIME OF SEPARATE PROPERTY

Art. 1536

Where spouses have stipulated in their ante-nuptial agreement that their property will be separate, each of them keeps the administration, enjoyment and free disposal of his or her personal property.

Each remains alone liable for the debts arising in his or her self, before or during marriage, except in the case of Article 220.

Art. 1537

The spouses shall contribute to the expenses of the marriage in accordance with the terms of their agreement; and where none exists in this regard, in the proportion determined by Article 214.

Art. 1538

With respect both to the other spouse and to third parties, a spouse may prove by any means that he or she has the exclusive ownership of a property.

The presumptions of ownership established in the ante-nuptial agreement are effective with respect to third parties, as well as in the relations between spouses, unless otherwise agreed.

Counter proof is as of right, and may be made by any means appropriate to establish that the property does not belong to the spouse designated by the presumption, or even, where it belongs to him or her, that it was acquired through a gratuitous transfer from the other spouse.

Property on which neither spouse may establish an exclusive ownership is deemed to belong to them in undivided ownership, to each by half.

Art. 1539

Where, during the marriage, one of the spouses entrusts to the other the administration of his personal property, the rules of agency shall apply. The agent spouse is however exempted from accounting for the fruits, if the power of attorney does not expressly oblige him or her to do so.

Art. 1540.-Where one of the spouses takes the management of the other's business in hand, with the knowledge of the latter and nevertheless without opposition on his or her part, she or he is deemed to have an implied agency, with authority to make acts of administration and enjoyment, but not acts of disposition.

That spouse is responsible for his or her management to the other as an agent. However, he or she is accountable only for the existing fruits; as regards those which he has failed to collect or fraudulently consumed, he may be sued only within the limit of the last five years.

Where one of the spouses has interfered in the management of the other's property in contempt of an established opposition, he or she is responsible for all the consequences of that interference, and accountable without limitation for all the fruits which he or she has collected, failed to collect or fraudulently consumed.

Art. 1541

One of the spouses is not the warrantor of a failure to invest or reinvest the other's property, unless he or she has interfered in operations of alienation or collection or unless it is proved that the funds were received by him or her, or he or she has profited by them.

Art. 1542

(Act n° 75-617 of 11 July 1975)

After dissolution of a marriage by the death of one of the spouses, the partition of the undivided property between spouses with separate property, as to all that relates to its forms, maintenance of undivided ownership and preferential allotment, auction of property, effects of partition, warranty and balances, is subject to all the rules which are established in the Title Of Successions for partitions between co-heirs.

The same rules shall apply after divorce or judicial separation. However, preferential allotment shall never be as of right. It may always be decided that the whole of a balance which may be owed shall be payable cash.

Art. 1543

(Act n° 85-1372 of 23 Dec. 1985)

The rules of Article 1479 shall apply to the claims which one spouse may have to enforce against the other.

Art. 1544 to 1568 [repealed]

CHAPTER IV – OF THE REGIME OF PARTICIPATION IN ACQUISITIONS

Art. 1569

Where the spouses have declared that they married under the regime of participation in acquisitions, each of them keeps the administration, enjoyment and free disposal of his or her personal property, without distinguishing between that which belonged to him or her on the day of the marriage or which has come to him or her after by succession or gratuitous transfer and that which he or she has acquired for value during the marriage. During the marriage, that regime operates as if the spouses were married under the regime of separation of property. At the dissolution of the regime, each spouse is entitled to participate by halves in value in the net acquisitions found in the patrimony of the other, and estimated owing to the double appraisal of the original patrimony and of the final patrimony.

The right to participate in the acquisitions may not be assigned as long as the matrimonial regime is not dissolved. Where dissolution occurs through the death of one spouse, his or her heirs have, on the net acquisitions made by the other, the same rights as their predecessor in title.

Art. 1570

(Act n° 85-1372 of 23 Dec. 1985)

An original patrimony includes the property which belonged to the spouse on the day of the marriage and those which he or she has acquired afterwards by succession or gratuitous transfer, as well as all property which, in the regime of community, constitutes separate property by its nature without giving rise to reimbursement. Account shall not be taken of the fruits of that property nor of the parts of that property which would have been in the nature of fruit or of which the spouse has disposed through gift inter vivos during the marriage.

The composition of the original patrimony shall be proved by a descriptive statement, even under private signature, established in the presence of the other spouse and signed by him or her.

Failing a descriptive statement, or where it is incomplete, proof of the composition of the original patrimony may be adduced only through the means of Article 1402.

Art. 1571

(Act n° 85-1372 of 23 Dec. 1985)

Original property shall be appraised according to its condition on the day of the marriage or of the acquisition and according to its value on the day when the matrimonial regime is liquidated. Where it has been alienated, one shall retain its value on the day of the alienation. Where new property has been subrogated to property alienated, one shall take into consideration the value of that new property.

From the original assets shall be deducted the debts with which they were burdened, re-evaluated, if there is occasion, according to the rules of Article 1469, paragraph 3. Where the liabilities exceed the assets, that excess shall be fictitiously united to the final patrimony.

Art. 1572

Form part of the final patrimony all the property which belongs to a spouse on the day when the matrimonial regime is dissolved, including, where appropriate, that of which he or she may have disposed of mortis causa and without excluding the sums of which he or she may be creditor against the other spouse. Where there is a divorce, judicial separation or anticipated liquidation of the acquisitions, the matrimonial regime is deemed dissolved on the day of the application.

The composition of the final patrimony shall be proved by a descriptive statement, even under private signature, which a spouse or his or her heirs must establish in the presence of the other spouse or of his or her heirs, or they having been duly summoned. That statement shall be drawn up within nine months after the dissolution of the matrimonial regime, except for extension of time granted by the president of the court in the form of interim relief proceedings.

Proof that the final patrimony would have included other property may be adduced by any means, even by testimony and presumptions.

Each spouse may, as to the property of the other, require the fixing of seals and an inventory in accordance with the rules provided for in the Code of Civil Procedure.

Art. 1573

(Act n° 85-1372 of 23 Dec. 1985)

To the existing property shall be fictitiously joined the property which is not included in the original patrimony and of which a spouse has disposed by gift inter vivos without the consent of the other spouse, as well as that which he or she has fraudulently alienated. An alienation on

condition of a life annuity or non-repayable shall be presumed to have been made in fraud of the spouse’s rights, unless the latter agreed.

Art. 1574

(Act n° 85-1372 of 23 Dec. 1985)

Existing property shall be appraised according to its condition at the time of the dissolution of the matrimonial regime and to its value on the day of the liquidation of the latter. Property alienated by gifts inter vivos, or in fraud of the rights of the other spouse shall be appraised according to its condition on the day of the alienation and to the value which it would have had, if it had been kept, on the day of the liquidation.

From the assets thus replenished shall be deducted all the debts which are not yet discharged, including the sums which may be owed to the other spouse.

The value, on the day of alienation, of the improvements brought about during the marriage in an original property donated by one spouse without the consent of the other before the dissolution of the matrimonial regime shall be added to the final patrimony.

Art. 1575

Where the final patrimony of a spouse is less than his or her original patrimony, the deficit is borne entirely by that spouse. Where it is greater, the increase constitutes the net acquisitions and gives rise to participation.

Where there are net acquisitions on both sides, they shall first be set off. Only the excess shall be partitioned: the spouse whose gain is the lesser is creditor with regard to the other spouse for half of that excess.

To a claim for participation, one shall add, in order to put them under the same settlement, the sums of which a spouse may in other respects be creditor towards the other, for values provided during the marriage and other indemnities, deduction being made, where necessary, of what that spouse may be debtor towards the other.

Art. 1576

A claim for participation gives rise to payment in money. Where a debtor spouse meets serious difficulties in making it entirely as soon as the liquidation is closed, the judges may grant him or her a time which may not exceed five years, subject to the condition of giving security and paying interest.

A claim for participation may however give rise to a settlement in kind, either by consent of both spouses, or under an order of the judge where the debtor spouse proves serious difficulties which prevent him or her from discharging it in money.

The settlement in kind provided for in the preceding paragraph is considered as an operation of partition where the property allotted was not included in the original patrimony or where the allottee spouse shares in the succession of the other.

The liquidation is not effective against creditors of the spouses: they retain the right to seize property allotted to the spouse of their debtor.

Art. 1577

(Act n° 85-1372 of 23 Dec. 1985)

A creditor spouse shall enforce payment of his or her claim for participation first on existing property and subsidiarily, beginning with the most recent alienations, on the property mentioned in Article 1573 which had been alienated by gifts inter vivos or in fraud of the rights of the other spouse.

Art. 1578

Upon dissolution of the matrimonial regime, where the parties do not agree to proceed to liquidation through agreement, one of them may apply to the court for having it proceeded to in court.

The rules prescribed for reaching a judicial partition of successions and communities shall apply to that application, as may be thought proper.

The parties shall communicate reciprocally to each other and shall communicate to the experts designated by the judge, all information and documents appropriate to the liquidation.

A claim for liquidation is time-barred after three years from the dissolution of the matrimonial regime. Claims lying against third parties “under Article 1167” (Act n° 85-1372 of 23 Dec. 1985) are time- barred after two years from the close of the liquidation.

Art. 1579

Where application of the rules of appraisal provided for by Articles 1571 and 1574 above would lead to a result obviously contrary to equity, the court may derogate from them on the application of one of the spouses.

Art. 1580

Where the disorder of the affairs, misadministration or misconduct of one spouse, give rise to fearing that the continuance of the matrimonial regime imperils the interest of the other, the latter may apply for the anticipated liquidation of his or her claim for participation.

The rules of separation of property shall apply to that application.

Where the application is entertained, the spouses shall be placed under the system of articles 1536 to 1541.

Art. 1581

When stipulating participation in acquisitions, the spouses may adopt any term not contrary to Articles 1387, 1388 and 1389.

They may in particular agree on a clause of unequal partition, or stipulate that the survivor of them or one of them if he or she survives, will be entitled to the whole of the net acquisitions made by the other.

It may also be agreed between the spouses that the one who, at the time of the dissolution of the regime, has against the other a claim for participation, may demand the giving in payment of certain property of the other spouse, if he or she establishes an essential interest in having it attributed to him or her.

TITLE VI

OF SALES

CHAPTER I - OF THE NATURE AND FORM OF SALES

Art. 1582

A sale is an agreement by which one person binds himself to deliver a thing, and another to pay for it.

It may be made by an authentic instrument or by an instrument under private signature.

Art. 1583

It is complete between the parties, and ownership is acquired as of right by the buyer with respect to the seller, as soon as the thing and the price have been agreed upon, although the thing has not yet been delivered or the price paid.

Art. 1584

A sale may be made outright or subject to a condition either precedent or subsequent.

It may also have as its object two or more alternative things.

In all these cases, its effect is regulated by the general principles relating to agreements.

Art. 1585

Where goods are not sold in bulk but by weight, number or measure, a sale is not complete, in that the things sold are at the risk of the seller until they have been weighed, counted or measured; but the buyer may claim either the delivery or damages, if there is occasion, in case of non-performance of the undertaking.

Art. 1586

Where, on the contrary, the goods have been sold in bulk, the sale is complete although the goods have not yet been weighed, counted or measured.

Art. 1587

With respect to wine, oil and other things which it is customary to taste before buying them, there is no sale so long as the buyer has not tasted and accepted them.

Art. 1588

A sale made upon trial shall always be deemed made under a condition precedent.

Art. 1589

A promise of sale is the same as a sale, where there is reciprocal consent of both parties as to the thing and the price.

(Act of 30 July 1930) Where that promise relates to plots already in lots or to be in lots, its acceptance and the agreement that will result therefrom shall be established by the payment of an instalment on the price, whatever the name given to that instalment may be, and by the vesting with possession of the plot.

The date of the agreement, even put into legal form afterwards, is that of the payment of the first instalment.

Art. 1589-1

(Act n° 2000-1208 of 13 Dec. 2000)

Is rendered void any unilateral undertaking entered into for the purpose of acquiring an immovable property or right for which a payment is required or received from the person who binds himself, whatever the cause and the form thereof may be.

Art. 1590

Where a promise to sell was made with an earnest, each contracting party is at liberty to withdraw.

The one who has given it, by losing it.

And the one who has received it, by returning twice the amount.

Art. 1591

The price of a sale must be determined and stated by the parties.

Art. 1592

It may however left to the estimation of a third person; where that person is unwilling or unable to make an estimate, there is no sale.

Art. 1593

The costs of instruments and other accessory to a sale shall be charged to the buyer.

CHAPTER II - OF THOSE WHO MAY BUY OR SELL

Art. 1594

All those to whom legislation does not forbid to do so may buy or sell.

Art. 1595 [repealed]

Art. 1596

May not, either by themselves or through intermediaries, become purchasers, on pain of annulment:

Guardians, as to the property of those under their guardianship;

Agents, as to the property which they have charge of selling;

Administrators, as to that of the communes or public institutions entrusted to their care;

Public officers, as to national property whose sale is made through their duties.

Art. 1597

Judges, [repealed by implication], members of the judiciary acting as Government procurators, registrars, bailiffs, avoués, counsels, advocates and notaires may not become assignees of suits, contested rights and actions which are within the jurisdiction of the court in the territory within which they exercise their duties, on pain of annulment, and of costs and damages.

CHAPTER III - OF THINGS WHICH MAY BE SOLD

Art. 1598

Everything which may be the subject of legal transactions between private individuals may be sold, where special statutes do not prohibit their alienation.

Art. 1599

The sale of a thing belonging to another is void: it may give rise to damages where the buyer did not know that the thing belonged to another.

Art. 1600 [repealed]

Art. 1601

Where, at the time of the sale, the thing sold has wholly perished, the sale is void.

Where only a part of the thing has perished, the buyer has the choice to waive the sale or to claim the part saved, by having the price determined proportionally.

CHAPTER III-1 - OF THE SALES OF BUILDINGS TO BE ERECTED

(Act n° 67-3 of 3 Jan. 1967)

Art. 1601-1

The sale of a building to be erected is that by which the seller binds himself to erect a building within a period determined by the contract.

It may be concluded for future delivery or in a future state of completion.

Art. 1601-2

A sale for future delivery is the contract by which the seller undertakes to deliver the building on its completion, and the buyer undertakes to take delivery of it and to pay the price of it at the date of delivery. The transfer of ownership is achieved by operation of law by the acknowledgement of the completion of the building through an authentic instrument; it is effective retroactively on the day of the sale.

Art. 1601-3

A sale in a future state of completion is the contract by which a seller transfers at once to the buyer his rights in the ground as well as the ownership of the existing structures. The works to come become the property of the buyer as they proceed; the buyer is bound to pay the price of them as the work proceeds.

The seller keeps the powers of a building owner until approval of the work.

Art. 1601-4

An assignment by a purchaser of the rights arising from a sale of a building to be erected substitutes by operation of law the assignee in the obligations of the buyer towards the seller.

Where the sale was united with an agency, the latter continues between the seller and the assignee.

Those provisions shall apply to any transfer inter vivos, voluntary or compulsory, or by reason of death.

CHAPTER IV - OF THE OBLIGATIONS OF THE SELLER

Section I – General Provisions

Art. 1602

The seller is obliged to explain clearly what he binds himself to.

Any obscure or ambiguous agreement shall be interpreted against the seller.

Art. 1603

He has two main obligations, that to deliver and that to warrant the thing which he sells.

Section II - Of Delivery

Art. 1604

Delivery is the transfer of the thing sold into the power and possession of the buyer.

Art. 1605

The obligation to deliver immovables is fulfilled on the part of the seller where he has handed over the keys, in case of a building, or where he has handed over the instruments of title.

Art. 1606

Delivery of movable effects is the outcome :

Either of a real delivery;

Or of the handing over of the keys of the buildings which contain them;

Or even of the sole consent of the parties, where the transfer cannot take place at the time of the sale, or where the buyer already had them in his power on another basis.

Art. 1607

Delivery of intangible rights is made either by handing over the instruments of title, or by the use which the purchaser makes of them with the consent of the seller.

Art. 1608

The expenses of delivery shall be charged to the seller, and those of removal to the buyer, unless otherwise agreed.

Art. 1609

Delivery shall be made at the place where the thing sold was at the time of the sale, unless otherwise agreed.

Art. 1610

Where the seller fails to make delivery within the time agreed upon between the parties, the purchaser may, at his choice, apply for avoidance of the sale, or for his being vested with possession, if the delay results only from an act of the seller.

Art. 1611

In all cases, the seller shall be ordered to pay damages, where the purchaser has suffered a loss because of the failure to deliver at the agreed time .

Art. 1612

The seller is not obliged to deliver the thing where the buyer does not pay the price of it unless the seller has granted him time for the payment.

Art. 1613

Nor is he obliged to deliver, even if he has allowed time for the payment, where, since the sale, the buyer [is under a judicial arrangement] or insolvent, so that the seller is in imminent danger of losing the price; unless the buyer gives him security to pay at the time-limit.

Art. 1614

The thing must be delivered in the condition in which it is at the time of the sale.

From that day, all the fruits belong to the purchaser.

Art. 1615

The obligation to deliver the thing includes its accessories and all that was designed for its perpetual use.

Art. 1616

The seller is obliged to deliver the capacity such as it is specified in the contract, subject to the modifications hereinafter expressed.

Art. 1617

Where the sale of an immovable was made with indication of the capacity, at the rate of so much for a measure, the seller is obliged to deliver to the purchaser, if the latter so requires, the quantity stated in the contract;

And if he cannot do so, or if the purchaser does not so require, the seller is obliged to suffer a proportionate reduction in price.

Art. 1618

Where, on the contrary, in the case or the preceding Article, the capacity is greater than the one stated in the contract, the purchaser has the choice to provide the surplus of the price, or to repudiate the contract, if the excess is one-twentieth above the capacity declared.

Art. 1619

In all other cases,

Whether the sale is made of a definite and limited thing,

Whether it has as its object distinct and separate tenements,

Whether it begins with the measure, or by the designation of the property sold followed by the measure,

The expression of that measure does not give rise to any increase of price, in favour of the seller for the excess of measure, or in favour of the purchaser, to any diminution in price for lesser measure, unless the difference between the actual measure and the one expressed in the contract is of one-twentieth more or less, with regard to the value of all the things sold, unless otherwise stipulated.

Art. 1620

In the case where, under the preceding Article, it is necessary to raise the price for excess of measure, the purchaser has the choice either to repudiate the contract or to provide the surplus of the price, with interest if he has kept the immovable.

Art. 1621

In all cases in which the purchaser is entitled to repudiate the contract, the seller is bound to return to him, besides the price, if he has received it, the costs of the contract.

Art. 1622

An action for an increase of price, on the part of the seller, and that for a diminution in price or for termination of the contract, on the part of the buyer, must be brought within the year, after the day of the contract, on pain of lapse.

Art. 1623

Where two tenements have been sold by the same contract for one and the same price, with the designation of the measures of each of them, and where there is less capacity in the one, and more in the other, set-off is made up to the amount due; and an action, either for an increase, or for a diminution in price, takes place only in accordance with the rules above laid down.

Art. 1624

The question of ascertaining upon whom, between the seller and the purchaser, falls the loss or deterioration of the thing sold before its delivery, shall be decided according to the rules prescribed in the Title Of Contracts or of Conventional Obligations in General.

Section III - Of Warranty

Art. 1625

The warranty which the seller owes to the purchaser has two objects: the first is the peaceful possession of the thing sold; the second, the latent defects of that thing, or redhibitory vices.

§ 1 - Of Warranty against Dispossession

Art. 1626

Although no stipulation as to warranty has been made at the time of the sale, the seller is obliged as of right to warrant the purchaser against a dispossession of the thing sold which he may suffer in whole or in part, or against encumbrances alleged on that thing, and not declared at the time of the sale.

Art. 1627

The parties may, by particular agreements, add to this obligation of right or diminish its effect; they may even agree that the seller may not be subject to any warranty.

Art. 1628

Although it be said that the seller may not be subject to any obligation, he nevertheless remains liable to that which results from an act which is his own; any agreement to the contrary is void.

Art. 1629.-In the same case of stipulation of no warranty, the seller, in case of dispossession, is bound to return the price, unless the purchaser knew, at the time of the sale, of the danger of dispossession, or unless he bought at his own risk.

Art. 1630

If a warranty has been promised, or if no stipulation was made in this respect, where the purchaser is dispossessed, he is entitled to claim against the seller:

1° The return of the price;

2° That of the fruits where he is obliged to return them to the owner who dispossesses him;

3° The expenses incurred in relation with the warranty claim of the buyer, and those incurred by the original plaintiff;

4° Finally, damages, as well as the expenses and proper costs of the contract.

Art. 1631

Where, at the time of dispossession, the thing sold has decreased in value or has been significantly damaged, either owing to the negligent conduct of the buyer, or by accidents of force majeure, the seller nevertheless is bound to return the whole price.

Art. 1632

But if the purchaser has derived some profit from the dilapidations made by him, the seller is entitled to retain from the price a sum equal to that profit.

Art. 1633

Where the thing sold has increased in price at the time of the dispossession, even independently from an act of the purchaser, the seller is obliged to pay him what it is worth above the price of the sale.

Art. 1634

A seller is bound to repay the purchaser or to make the person who dispossesses him repay him for all the useful repairs and improvements which he has made on the tenement.

Art. 1635

Where a seller has sold the tenement of another in bad faith, he is obliged to repay the purchaser for all the expenses, even for luxury or pleasure, which the latter may have made on the tenement.

Art. 1636

Where a purchaser is dispossessed from only part of the thing, which is of such importance, in proportion to the whole, that the purchaser would not have bought without the part of which he is dispossessed, he may have the sale terminated.

Art. 1637

Where, in case of dispossession of part of a tenement sold, the sale is not terminated, the value of the part of which the purchaser is dispossessed shall be reimbursed to him according to an appraisal at the time of the dispossession, and not in proportion to the total price of the sale, whether the thing sold has increased or decreased in value.

Art. 1638

Where a property sold is, without any declaration having been made, encumbered with non-apparent servitudes which are of such importance that it is to be presumed that the purchaser would not have bought if he had known of them, he may apply for termination of the contract, unless he prefers to content himself with an indemnity.

Art. 1639

The other questions to which damages resulting for the purchaser from the non-performance of the sale may give rise shall be decided in accordance with the general rules established in the Title Of Contracts and of Conventional Obligations in General.

Art. 1640.

-A warranty against dispossession ceases where the purchaser has allowed a final judgment, or a judgment no longer appealable, to be handed down against him without joining his seller in the proceedings, if the latter proves that there were sufficient grounds to have the action dismissed.

§ 2 - Of Warranty against the Defects of the Thing Sold

Art. 1641

A seller is bound to a warranty on account of the latent defects of the thing sold which render it unfit for the use for which it was intended, or which so impair that use that the buyer would not have acquired it, or would only have given a lesser price for it, had he known of them.

Art. 1642

A seller is not liable for defects which are patent and which the buyer could ascertain for himself.

Art. 1642-1

(Act n° 67-547 of 7 July 1967)

The seller of a building to be erected may not be discharged, either before approval of the work, or before the expiry of a period of one month after the vesting of the purchaser into possession, for defects of construction then patent.

There may be no occasion for avoidance of the contract or for diminution in price where the seller binds himself to repair the defect.

Art. 1643

He is liable for latent defects, even though he did not know of them, unless he has stipulated that he would not be bound to any warranty in that case.

Art. 1644

In the cases of Articles 1641 and 1643, the buyer has the choice either of returning the thing and having the price repaid to him or of keeping the thing and having a part of the price repaid to him, as appraised by experts.

Art. 1645

Where the seller knew of the defects of the thing, he is liable, in addition to restitution of the price which he received from him, for all damages towards the buyer.

Art. 1646

Where the seller did not know of the defects of the thing, he is only liable for restitution of the price and for reimbursing the buyer for the costs occasioned by the sale.

Art. 1646-1

(Act n° 78-12 of 4 Jan. 1978)

The seller of a building to be erected is liable, from the approval of the work, for the obligations for which the architects, contractors and other persons bound towards the building owner by a contract of hiring of industry and services are themselves liable under Articles 1792, 1792-1, 1792-2 and 1792-3 of this Code.

Those warranties benefit the successive owners of the building.

There may be no occasion for avoidance of the sale or diminution in price where the seller binds himself to repair the damages specified in Articles 1792, 1792-1 and 1792-2 of this Code and to take upon himself the warranty provided for in Article 1792-3.

Art. 1647

Where the thing which had defects perishes because of its bad quality, the loss falls upon the seller who is liable to the buyer for restitution of the price and other compensations explained in the two preceding Articles [Articles 1645 and 1646].

But a loss occasioned by a fortuitous event falls upon the buyer.

Art. 1648

The action resulting from redhibitory vices must be brought by the buyer within a short time, according to the nature of the redhibitory vices and the usage of the place where the sale was made.

(Act n° 67-547 of 7 July 1967) In the case provided for in Article 1642-1, the action must be brought, under pain of being time-barred, within the year following the date on which the seller may be discharged from patent defects.

Art. 1649

It does nor take place with regard to sales made by order of the court.

CHAPTER V - OF THE OBLIGATIONS OF THE BUYER

Art. 1650

The main obligation of the buyer is to pay the price on the day and at the place fixed by the sale.

Art. 1651

Where nothing has been fixed in this regard at the time of the sale, the buyer must pay at the place and at the time where and when delivery is to be made.

Art. 1652

The buyer owes interest on the price of the sale up to the time of the payment, in the three following cases:

Where it has been so agreed at the time of the sale;

Where the thing sold and delivered produces fruits or other incomes;

Where the buyer is under notice to pay.

In that last case, interest runs only from the notice.

Art. 1653

Where the buyer is disturbed or rightly fears that he will be disturbed by an action, either for a mortgage or for recovery of property, he may suspend the payment of the price until the seller has caused the disturbance to cease, unless the latter prefers to give security, or unless it was stipulated that the buyer will pay notwithstanding a disturbance.

Art. 1654

Where the buyer does not pay the price, the seller may apply for avoidance of the sale.

Art. 1655

The avoidance of a sale of immovables shall be ordered at once where the seller is in danger of losing the thing and the price.

Where that danger does not exist, the judge may grant the purchaser a period more or less long according to the circumstances.

Where that period expires without the buyer having paid, the avoidance of the sale shall be ordered.

Art. 1656

Where it has been stipulated at the time of the sale of immovables that, failing payment within the period agreed upon, the sale will be avoided by operation of law, the purchaser may nevertheless pay after the expiry of the period, so long as he is not given notice by a demand for payment; but, after that demand, the judge may not grant him any period.

Art. 1657

In matters of sale of commodities and movable effects, the avoidance of the sale takes place by operation of law, and without any demand, for the benefit of the seller, after the expiry of the period agreed upon for the removal.

CHAPTER VI - OF AVOIDANCE AND RESCISSION OF SALES

Art. 1658

Independently of the grounds for annulment or avoidance already explained in this Title, and of those which are common to all agreements, a contract of sale may be avoided through the exercise of a power of redemption and on account of the cheapness of the price.

Section I - Of Power of Redemption

Art. 1659

A power of redemption or repurchase is an agreement by which the seller reserves to himself the taking back of the thing sold, through restitution of the purchase price, and the reimbursement which Article 1673 deals with.

Art. 1660

A power of redemption may not be stipulated for a time exceeding five years.

Where it has been stipulated for a longer time, it shall be reduced to that time.

Art. 1661

The time fixed is of the essence and may not be extended by the judge.

Art. 1662

Where the seller has not exercised his power of redemption within the time fixed, the purchaser remains the irrevocable owner.

Art. 1663

The time runs against all persons, even against a minor, subject to a remedy against those whom it may concern, if there is occasion.

Art. 1664

The seller under a clause of redemption may exercise his power against a second purchaser, even when the power of redemption has not been declared in the second contract.

Art. 1665

The purchaser under a clause of redemption exercises all the rights of his seller; he may acquire ownership by prescription both against the true owner and against those who claim rights or mortgages on the thing sold.

Art. 1666

He may oppose the benefit of seizure and sale against the creditors of his seller.

Art. 1667

Where the purchaser under a clause of redemption of an undivided part of a property becomes the successful bidder for the whole in an auction sale induced against him, he may compel the seller to take back the whole when the latter wishes to make use of the clause.

Art. 1668

Where several persons have jointly sold, and by a same contract, a common property, each may exercise the power of redemption only for the share which he had in it.

Art. 1669

It shall be the same where the person who has sold a property alone has left several heirs.

Each one of these co-heirs may make use of the power of redemption only for the share he takes in the succession.

Art. 1670

But, in the case of the two preceding Articles, the purchaser may demand that all the co-sellers or all the co-heirs be joined in the proceedings in order to agree between them as to the redemption of the whole property; and where they do not agree, their action shall be dismissed.

Art. 1671

Where the sale of a property belonging to several persons has not been jointly made and of the whole property together, and where each has only sold the share which he had therein, they may exercise separately the power of redemption on the portion which belonged to them;

And the purchaser may not compel the one who enforces it in that way to redeem the whole.

Art. 1672

Where the purchaser has left several heirs, the power of redemption may be exercised against each of them only for his share, in the case where it is still undivided, and in that where the thing sold has been partitioned between them.

But, where a partition of the succession has taken place, and the property sold has fallen to the share of one of them, the power of redemption may be exercised against him for the whole.

Art. 1673

A seller who makes use of a clause of redemption shall reimburse not only the purchase price, but also the expenses and fair costs of the sale, the necessary repairs and those which have increased the value of the tenement, up to the amount of that increase. He may be vested into possession only after having discharged all those obligations.

(Ord. n° 59-71 of 7 Jan. 1959) Where the seller comes into his property again through the effect of a clause of redemption, he retakes it free of all encumbrances and mortgages with which the purchaser may have burdened it, provided that the clause has been duly registered at the land registry, before the registration of the said encumbrances and mortgages. He is bound to carry out the leases made without fraud by the purchaser.

Section II - Of Rescission of Sales because of Loss

Art. 1674

Where a seller has suffered a loss greater than seven-twelfths of the price of an immovable, he is entitled to apply for the rescission of the sale, even though he may have expressly renounced in the contract the faculty of applying for that rescission and have declared to donate the surplus.

Art. 1675

In order to ascertain whether there has been a loss of the seven-twelfths, the immovable must be appraised according to its condition and its value at the time of the sale.

(Act of 28 Nov. 1949) In the case of a unilateral promise of sale, the loss is appraised on the day of its execution.

Art. 1676

The claim is no longer admissible after the expiry of two years, after the day of the sale.

That time runs against [married women, repealed by implication], and against absentees, adults in guardianship and minors coming in the right of an adult who has sold.

That time also runs and is not suspended during the period stipulated for a clause of redemption.

Art. 1677

Proof of loss may be allowed only through judgment, and in the case only where the facts alleged are probable and serious enough to induce a presumption of loss.

Art. 1678

That proof may be adduced only through a report drawn by three experts who are obliged to make a single joint memorandum, and to give but a single opinion by a plurality of votes.

Art. 1679

Where there are different opinions, the memorandum shall contain the reasons thereof, but it shall not be allowed to disclose the opinion of each expert.

Art. 1680

The three experts shall be appointed by the court, unless the parties have agreed to appoint all three jointly.

Art. 1681

In the case where the action for rescission is entertained, the purchaser has the choice, either to return the thing while taking back the price which he paid for it, or to keep the tenement while paying the balance of the fair price, after deducting one-tenth of the total price.

A third party in possession has the same right, save his warranty against his seller.

Art. 1682

Where the purchaser prefers to keep the thing by paying the balance specified by the preceding Article, he owes the interest of that balance, from the day of the claim for rescission.

Where he prefers to return it and to take back the price, he shall return the fruits from the day of the claim.

Interest on the price which he has paid is also counted for him from the day of the same claim, or from the day of payment, where he has not collected any fruits.

Art. 1683

Rescission for loss does not take place in favour of the buyer.

Art. 1684

It does not take place in any sale which, according to law, may only be made by order of the court.

Art. 1685

The rules explained in the preceding Section for cases in which several persons have sold jointly or separately, and for the one in which the purchaser has left several heirs, shall likewise be complied with when bringing an action for rescission.

CHAPTER VII - OF AUCTION

Art. 1686

Where a thing common to several persons cannot be partitioned conveniently and without loss;

Or where, in a partition of property in common made amicably, there is any property which none of the coparceners can or wishes to take,

A sale thereof shall be made by auction and the proceeds shall be distributed between the co-owners.

Art. 1687

Each co-owner is at liberty to request that outsiders be given notice of the sale: they shall necessarily be given notice where one of the co-owners is a minor.

Art. 1688

The method and formalities to be complied with for an auction are explained in the Title Of Successions and in the Code of Civil Procedure.

CHAPTER VIII - OF ASSIGNMENT OF CLAIMS AND OF OTHER INCORPOREAL RIGHTS

Art. 1689

In case of assignment of a claim, or of a right or of an action against a third party, delivery takes place between the assignor and the assignee by handing over the instrument of title.

Art. 1690

An assignee is vested with regard to third parties only by notice of the assignment served upon the debtor.

Nevertheless, the assignee may likewise be vested by acceptance of the assignment given by the debtor in an authentic act.

Art. 1691

Where, before the debtor has been given notice by the assignor or the assignee, the debtor has paid the assignor, he is lawfully discharged.

Art. 1692

The sale or assignment of a claim includes the accessories of the claim, such as security, prior charges and mortgages.

Art. 1693

A person who sells a claim or any other incorporeal right must warrant its existence at the time of the assignment, even though it is made without warranty.

Art. 1694

He is responsible for the solvency of the debtor only where he has bound himself thereto, and only up to the amount of the price which he has received for the claim.

Art. 1695

Where he has promised the solvency of the debtor, that promise only relates to the present solvency, and does not extend to the future, unless the assignor has expressly so stipulated.

Art. 1696

A person who sells an inheritance without specifying its contents in detail, is bound to warrant only his capacity as heir.

Art. 1697

If he had already benefited by fruits of some tenement or received the amount of some claim belonging to that inheritance, or sold some effects of the succession, he is bound to reimburse the purchaser therefor, unless he has expressly reserved them at the time of the sale.

Art. 1698

The purchaser must on his part reimburse the seller for what the latter has paid for the debts and charges of the succession, and recompense him for everything for which he was creditor, unless otherwise stipulated.

Art. 1699

A person against whom a litigious right has been assigned may have himself released by the assignee by reimbursing him for the actual price of the assignment with the expenses and fair costs, and with interest from the day when the assignee has paid the price of the assignment made to him.

Art. 1700

A matter is deemed litigious as soon as there is a case and controversy as to the merits of the right.

Art. 1701

The provision laid down in Article 1699 shall not apply:

1° In the case where the assignment has been made to a co-heir or co-owner of the right assigned;

2° Where it has been made to a creditor in payment of what is due to him;

3° Where it has been made to the possessor of the property to which the litigious right relates.

TITLE VII

OF EXCHANGES

Art. 1702

An exchange is a contract by which the parties give to each other one thing for another.

Art. 1703

An exchange is the outcome of the sole consent of the parties, in the same manner as a sale.

Art. 1704

Where one of the exchangers has already received the thing given to him in exchange and he proves afterwards that the other contracting party is not the owner of that thing, he may not be compelled to deliver the thing that he has promised in mutual exchange, but only to return the thing which he has received.

Art. 1705

The exchanger who is dispossessed of the thing which he has received in exchange has the choice between claiming damages or claiming back his thing.

Art. 1706

Rescission on account of loss does not take place in contracts of exchange.

Art. 1707

All the other rules laid down for contracts of sale shall apply to exchanges as to other issues.

TITLE VIII

OF HIRING

CHAPTER I - GENERAL PROVISIONS

Art. 1708

There are two kinds of contracts of hiring:

One for things,

And one for work.

Art. 1709

The hiring of things is a contract by which one of the parties binds himself to have the other enjoy a thing during a certain time, and at a charge of a certain price which the latter binds himself to pay him.

Art. 1710

The hiring of work is a contract by which one of the parties binds himself to do something for the other, at a charge of a price agreed between them.

Art. 1711

These two modes of hiring are further subdivided into several particular kinds:

The hiring of houses and movables is called a lease for rent;

That of rural property, an agricultural lease;

That of work or of service, a hire;

That of animals of which the profits are divided between the owner and the one to whom he entrusts them, a livestock lease;

Estimates, contracts or fixed bargains, for the undertaking of a work at a charge of a determined price, are also hiring, where the material is provided by the one for whom the work is done.

These last three kinds have special rules.

Art. 1712

Leases of national property, of the property of communes and public institutions are subject to special rules.

CHAPTER II - OF THE RENTAL OF THINGS

Art. 1713

One may rent all kinds of property, movables and immovables.

Section I – Of the Rules Common to Leases of Houses and of Rural Property

Art. 1714

(Ord. of 17 Oct. 1945; Act n°46-682 of 13 April 1946)

One may lease either in writing or verbally, except, as regards rural property, for the application of the rules particular to agricultural leases and sharecropping.

Art. 1715

Where a lease made without any writing has not yet been carried out, and one of the parties denies it, proof may not be adduced through witnesses, however moderate the price may be, and although it is alleged that a deposit was paid.

Oath may be tendered only to the one who denies the lease.

Art. 1716

Where there is a controversy as to the price of a verbal lease which is being carried out, and there is no receipt, the owner shall be believed upon his oath, unless the tenant prefers to apply for an appraisal by experts; in which case, the costs of the appraisement shall be charged to him, if the appraisal exceeds the price which he has declared.

Art. 1717

A lessee has the right to sublet or even to assign his lease to another person, unless that faculty has been forbidden to him.

It may be forbidden wholly or in part.

Such a clause is always strict.

Art. 1718

(Act n° 65-570 of 13 July 1965)

The provisions of Article 595, paragraphs 2 and 3, relating to leases made by usufructuaries shall apply to leases made by a guardian without authorization of the family council.

Art. 1719

A lessor is bound, by the nature of the contract, and without need of any particular stipulation:

1° To deliver the thing leased to the lessee “and, where the main dwelling of the latter is concerned, a decent lodging” (Act n° 2000-1208 of 13Dec. 2000);

2° To maintain that thing in order so that it can serve the use for which it has been let;

3° To secure to the lessee a peaceful enjoyment for the duration of the lease;

4° (Act n°46-682 of 13 April 1946) To secure also the permanence and quality of plantings.

Art. 1720

A lessor is bound to deliver the thing in good repair of whatever character.

He must, during the term of the lease, make all the repairs which may become necessary, other than those incumbent upon lessees.

Art. 1721

A warranty is due to the tenant for all vices or defects of the thing leased which prevent use of it, although the lessor did not know of them at the time of the lease.

Where any loss results to the lessee from those vices or defects, the lessor is obliged to indemnify him.

Art. 1722

Where, during the term of the lease, the thing leased is wholly destroyed by a fortuitous event, the lease is terminated by operation of law; where it is destroyed only in part, the lessee

may, according to the circumstances, apply either for a reduction in price, or even for termination of the lease. In either case, no compensation is owed.

Art. 1723

A lessor may not, during the term of the lease, change the form of the thing leased.

Art. 1724

Where, during the lease, the thing leased needs urgent repairs which cannot be postponed until its end, the lessee must bear them, whatever inconvenience they cause him and although he is deprived of a part of the thing leased while they are being made.

But where those repairs last more than forty days, the rent shall be reduced in proportion to the time and to the part of the thing leased of which he has been deprived.

Where the repairs are of such a nature that they render uninhabitable what is required for the lodging of the lessee and his family, he may have the lease terminated.

Art. 1725.-A lessor is not bound to warrant the lessee against disturbance which third persons cause to his enjoyment by assault, without claiming in other respects any right to the thing leased; but the lessee may proceed against them in his own name.

Art. 1726

Where, on the contrary, the tenant or the farmer have been disturbed in their enjoyment in consequence of an action relating to the ownership of the tenement, they are entitled to a proportionate reduction of the rent of the lease or agricultural lease, provided that a notice of the disturbance and of the impediment has been served upon the owner.

Art. 1727

Where those who have committed assault claim to have some right to the property leased, or where the lessee himself is summoned in court to be ordered to relinquish all or part of that

thing, or to suffer the exercise of some servitude, he must have the lessor made a party to warranty proceedings and shall be left out of the action, if he so demands, by naming the lessor on whose behalf he possesses.

Art. 1728

A lessee is bound to two main obligations:

1° To make use of the thing leased as a prudent administrator and according to the purposes intended by the lease, or according to those presumed under the circumstances, failing an agreement;

2° To pay the rent at the agreed times.

Art. 1729

Where the lessee uses the thing leased for another use than the one for which it was intended, or from which damage may result to the lessor, the latter may, according to the circumstances, have the lease terminated.

Art. 1730

Where an inventory of fixtures has been made between the lessor and the lessee, the latter must return the thing such as he received it, according to that inventory, except for what has perished or has been deteriorated through decay or force majeure.

Art. 1731

Where no inventory has been made, the lessee is presumed to have received the premises in a good state of repairs incumbent upon lessees, and must return them in the same state, except for proof to the contrary.

Art. 1732

He is answerable for the deteriorations or losses occurring during his enjoyment, unless he proves that they took place without his fault.

Art. 1733

He is answerable for fire, unless he proves:

That the fire happened by a fortuitous event or force majeure, or by a defect of construction, or

That the fire was communicated through a neighbouring house.

Art. 1734

(Act of 5 Jan. 1883)

Where there are several tenants, they are all liable for a fire in proportion to the rental value of the part of the building which they occupy;

Unless they prove that the fire has originated in the dwelling of one of them, in which case, that one alone is liable; or

Unless some of them prove that the fire could not have started with them, in which case those ones are not liable.

Art. 1735

A lessee is responsible for the deteriorations and losses which occur through the act of persons of his house or of his sub-tenants.

Art. 1736

Where a lease was made without writing, one of the parties may give the other notice to quit only by observing the period fixed by the usage of the place.

Art. 1737

A lease ceases by operation of law at the expiry of the term fixed, where it has been made in writing, without it being necessary to give notice to quit.

Art. 1738

Where, at the expiry of written leases, the lessee remains and is left in possession, a new lease takes place, whose effect is regulated by the Article relating to leases made without writing.

Art. 1739

Where a notice to quit has been served, the lessee, although he has continued his enjoyment, may not invoke a tacit renewal.

Art. 1740

In the case of the two preceding Articles, a security given for a lease does not extend to the obligations resulting from an extension.

Art. 1741

A contract of lease is terminated by the loss of the thing leased and by the respective failure of the lessor and the lessee to perform their undertakings.

Art. 1742

A contract of lease is not terminated by the death of the lessor or by that of the lessee.

Art. 1743

(Ord. n° 45-2380 of 17 Oct. 1945; Act n°46-682 of 13 April 1946)

Where a lessor sells a thing leased, the purchaser may not evict the agricultural tenant, sharecropper or tenant who has an authentic lease or one whose date is undisputable.

He may, however, evict a tenant of non-rural property where he has reserved that right by the contract of lease.

Art. 1744

(Ord. n° 45-2380 of 17 Oct. 1945)

Where it was agreed at the time of the lease that in case of sale, the purchaser would be allowed to evict the lessee and no stipulation was made as to damages, the lessor is bound to indemnify the tenant in the following manner;

Art. 1745

In case of a house, apartment or shop, the lessor shall pay to the evicted tenant, as damages, a sum equal to the price of the rent during the time which, according to the usage of the place, is allowed between the notice to quit and the departure.

Art. 1746

In case of rural property, the indemnity which the lessor must pay shall be one-third of the price of the lease for the whole time which remains to run.

Art. 1747

Where manufactures, factories or other establishments which require large advances are concerned, the indemnity shall be fixed by experts.

Art. 1748

(Ord. n° 45-2380 of 17 Oct. 1945)

A purchaser who wishes to make use of the faculty reserved by the lease to evict a tenant in case of sale is also bound to inform him within the period customary in the place for notices to quit.

Art. 1749

(Ord. n° 45-2380 of 17 Oct. 1945)

Tenants may not be evicted unless the damages explained above have been paid to them by the lessor or, in his default, by the new purchaser.

Art. 1750

Where a lease is not made by authentic instrument or has not an undisputable date, the purchaser is not liable for any damages.

Art. 1751

(Act n° 62-902 of 4 Aug. 1962)

The right to a lease of premises, without professional or commercial character, which is actually used for the dwelling of two spouses and even where the lease was concluded before the marriage, is, whatever their matrimonial regime may be and notwithstanding any agreement to the contrary, considered to belong to both spouses.

In case of divorce or judicial separation, that right may be allotted by the court seized of the application for divorce or judicial separation, on account of the social and family interests concerned, to one of the spouses, subject to the rights to reimbursement or indemnity for the benefit of the other spouse.

(Act n° 2001-1135 of 3 Dec. 2001) In case of death of one of the spouses, the surviving spouse co-lessee has an exclusive right on it, except where he or she expressly renounces it.

Section II Of the Special Rules for Leases of Houses

Art. 1752

A tenant which does not garnish the house with sufficient furniture may be evicted, unless he gives sufficient security to answer for the rent.

Art. 1753

A sub-tenant is liable to the owner only up to the amount of the price of his sub-lease which he may owe at the time of the seizure, without his being allowed to set off payments made in advance.

Payments made by a sub-tenant either under a stipulation contained in his lease, or as a consequence of the usage of the place, are not deemed to be made in advance.

Art. 1754

Repairs incumbent upon the tenant or those of routine maintenance for which a tenant is responsible, unless otherwise stipulated, are those which are considered as such by the usage of the place and, among others, the repairs to be made :

To fireplaces, back-plates, mantelpieces and mantelshelves;

To the plastering of the bottom of walls of flats and other places of dwelling, to the height of one metre;

To pavements and tiles of rooms, where only a few are broken;

To panes of glass, unless they are broken by hail, or other accidents, extraordinary and by force majeure, for which a tenant may not be made responsible;

To doors, windows, boards for partitioning or closing shops, hinges, bolts and locks.

Art. 1755

None of the repairs deemed as incumbent upon a tenant may be charged to tenants, where they are occasioned only through decay or force majeure.

Art. 1756

The cleaning of wells and that of cesspools are charged to the lessor, unless there is a clause to the contrary.

Art. 1757

A lease of furniture supplied to garnish a whole house, a whole main building, a shop, or all others flats, is deemed made for the usual duration of leases of houses, main buildings, shops or other flats, according to the usage of the place.

Art. 1758

A lease of a furnished apartment is deemed made by the year where it has been made for so much a year;

By the month, where it has been made for so much a month;

By the day, where it has been made for so much a day.

Where nothing shows that the lease was made for so much a year, a month or a day, the tenancy is deemed made according to the usage of the place.

Art. 1759

Where the tenant of a house or a flat continues his enjoyment after the expiry of the lease in writing, without objection on the part of the lessor, he shall be deemed to occupy them under the same conditions, for the term fixed by the usage of the place, and he may not leave nor be evicted except after a notice to quit served according to the usage of the place.

Art. 1760

In case of termination owing to the fault of the lessee, the latter is bound to pay the price of the rent during the time necessary for re-renting, without prejudice to damages which may have resulted from the abuse.

Art. 1761

A lessor may not terminate the tenancy, although he declares that he wishes to occupy himself the house leased , unless there is a stipulation to the contrary.

Art. 1762

Where it was agreed, in the contract of lease, that the lessor may come and occupy the house, he is bound to give notice to quit in advance, at the times fixed by the usage of the place.

Section III – Of the Special Rules for Agricultural Leases

Art. 1763 [repealed]

Art. 1764

In case of breach, the owner is entitled to re-enter into enjoyment and the lessee shall be ordered to pay the damages resulting from the non-performance of the lease.

Art. 1765

Where, in an agricultural lease, tenements are given a lesser or greater capacity than the one they really have, there is occasion for an increase or a decrease in price for the farmer only in the cases and under the conditions expressed in the Title Of Sales.

Art. 1766

Where the lessee of a rural property does not furnish it with cattle and implements necessary for its farming, where he abandons cultivating, where he does not cultivate as a prudent owner, where he makes of the thing leased a use other than that for which it was intended, or, in general, where he does not comply with the terms of the lease and the lessor suffers a loss thereby, the lessor may, according to the circumstances, have the lease terminated.

In case of termination owing to an act of the lessee, he is liable for damages, as is stated in Article 1764.

Art. 1767

Any lesser of rural property is bound to store the crops in the place provided for that purpose according to the lease.

Art. 1768

A lessee of rural property is bound to give notice to the owner of all encroachments which may be committed against the tenements, on pain of all costs and damages.

That notice must be given within the same period as that fixed for the case of an originating claim according to the distance between places.

Art. 1769

Where the lease is made for several years, and, during the term of lease, the whole or half of a crop at least is carried off by fortuitous events, the farmer may ask for a rebate of the price of the lease, unless he is compensated by the preceding crops.

Where he is not compensated, the appraisal of the rebate may take place only at the end of the lease, at which time, a set-off shall be made of all the years of enjoyment;

And nevertheless the judge may temporarily exempt the lessee from paying a part of the price by reason of the loss suffered.

Art. 1770

Where a lease is only for one year, and the loss is of the whole or at least of half the fruits, the lessee is discharged from a proportionate part of the price of the rent.

He may not claim any rebate where the loss is of less than one-half.

Art. 1771

A farmer may not obtain any rebate where the loss of the fruits occurs after they have been separated from the ground, unless the lease gives the owner a share of the crop in kind; in which case, the owner must bear his share of the loss, provided the lessee was not under notice to deliver his share of the crop to him.

Neither may a farmer ask for a rebate, where the cause of the damage existed and was known at the time when the lease was made.

Art. 1772

A lessee may be made responsible for fortuitous events by an express stipulation.

Art. 1773

That stipulation shall only apply to ordinary fortuitous events, such as hail, lightning, frost or failure of the crop.

It may not extend to extraordinary fortuitous events, such as the ravages of war, or a flood, to which the country is not ordinarily subject, unless the lessee has been made responsible for all the fortuitous events, foreseen or unforeseen.

Art. 1774

An unwritten lease of a rural tenement, is deemed made for the time which is necessary in order that the lessee collects all the fruits of the property farmed.

Thus an agricultural lease of a field, of a vineyard, and of any other tenement whose fruits are collected in whole during the course of a year, is deemed made for one year.

A lease of arable lands, where they are divided by break or season, is deemed made for as many years as there are breaks.

Art. 1775

(Act of 15 July 1942)

A lease of rural properties, although unwritten, ceases at the expiry of the time specified by the preceding Article only through the effect of a written notice to quit given by one of the parties to the other, six months at least before that time.

Failing a notice to quit given in the time above specified, a new lease takes place whose effect is regulated by Article 1774.

It shall be the same where, at the expiry of written leases, the lessee remains and is left in possession.

Art. 1776 [repealed]

Art. 1777

A departing farmer must leave to the one who succeeds him in the cultivation, suitable lodging and other facilities for the work of the following year; and reciprocally, the entering farmer must provide the one who is departing with suitable lodging and other facilities for the consumption of fodder and for harvests which remain to be made.

In either case, the usage of the place must be complied with.

Art. 1778

A departing farmer must also leave the straws and manure of the year, where he has received them on entering into possession; and even where he did not receive them, the owner may retain them according to his appraisal.

CHAPTER III - OF THE HIRING OF INDUSTRY AND SERVICES

Art. 1779

There are three main kinds of hiring of industry and services:

1° The hiring of workers who enter the service of someone;

2° That of carriers, as well by land as by water, who undertake to carry persons or goods;

3° (Act n° 67-3 of 3 Jan. 1967) That of architects, contractors for work and technicians following research, estimates or contracts.

Section I - Of the Hiring of Servants and Workers

Art. 1780

One person may engage his services only for a time , or for a specified undertaking.

(Act of 27 Dec. 1890) The hiring of services made without determination of duration may always cease through the wish of one of the contracting parties.

Nevertheless, the termination of the contract through the wish of one only of the contracting parties may give rise to damages.

To fix the compensation to be granted, if any, account shall be taken of usages, of the nature of the services hired, of the time elapsed, of the deductions made and of the payments made in view of a retirement pension, and, in general, of all the circumstances which may establish the existence and determine the extent of the loss caused.

The parties may not renounce in advance the contingent right to claim damages under the above provisions.

The controversies to which the application of the preceding paragraphs may give rise, when they are brought before civil courts and before courts of appeal, shall be prepared for trial as summary proceedings and tried as emergencies.

Art. 1781 [repealed]

Section II - Of Carriers by Land and by Water

Art. 1782

Carriers by land and by water are subject, for the custody and preservation of the things which are entrusted to them, to the same obligations as innkeepers who are dealt with in the Title Of Deposits and of Sequestration.

Art. 1783

They answer not only for what they have already received in their boat or carriage, but also for what has been delivered to them in port or in warehouse, to be placed in their boat or carriage.

Art. 1784

They are liable for the loss and damages of the things which are entrusted to them, unless they prove that they have been lost or damaged by fortuitous event or force majeure.

Art. 1785

Common carriers by land or by water, and public haulage contractors, must keep account books for the money, the articles and parcels which they take charge of.

Art. 1786

Common carriers and directors of public carriage and haulage, masters of boats and ships, are in addition subject to particular regulations which constitute the law between them and other citizens.

Section III - Of Estimates and of Works

Art. 1787

Where one instructs a person to do a work, it may be agreed that he will furnish his work or his industry only, or that he will also furnish the material.

Art. 1788

Where, in case the worker furnishes the material, the thing happens to perish, in whatever manner, before it is delivered, the loss falls upon the worker, unless the master was given notice to receive the thing.

Art. 1789

In case the worker furnishes his work only, if the thing happens to perish, the workman is liable for his fault only.

Art. 1790

Where, in the case of the preceding Article, the thing happens to perish, although without any fault on the worker's part, before the work was received, and without the master being given notice to check it, the worker may not claim any wages, unless the thing has perished through defect of the material.

Art. 1791

Where a work for several pieces or by measure is concerned, it may be checked by parts: checking is deemed to have been made for all the parts paid, if the master pays the worker in proportion to the work done.

Art. 1792

(Act n° 78-12 of 4 Jan. 1978)

Any builder of a work is liable as of right, towards the building owner or purchaser, for damages, even resulting from a defect of the ground, which imperil the strength of the building or which, affecting it in one of its constituent parts or one of its elements of equipment, render it unsuitable for its purposes.

Such liability does not take place where the builder proves that the damages were occasioned by an extraneous event.

Art. 1792-1

(Act n° 78-12 of 4 Jan. 1978)

Are deemed builders of the work:

1° Any architect, contractor, technician or other person bound to the building owner by a contract of hire of work;

2° Any person who sells, after completion, a work which he built or had built;

3° Any person who, although acting in the capacity of agent for the building owner, performs duties similar to those of a hirer out of work.

Art. 1792-2

(Act n° 78-12 of 4 Jan. 1978)

The presumption of liability established by Article 1792 also extends to damages affecting the strength of the elements of equipment of a building, but only where the latter are an indissociable and integral part of the works of development, foundation, ossature, close or cover.

An element of equipment is deemed to be an indissociable part of one of the works listed in the preceding Article where the demounting, disassembling or replacing thereof cannot be effected without deterioration or removal of material from that work.

Art. 1792-3

(Act n° 78-12 of 4 Jan. 1978)

Other elements of equipment of a building are the subject of a warranty of good running for a minimum period of two years after the approval of the work.

Art. 1792-4

(Act n° 78-12 of 4 Jan. 1978)

The manufacturer of a work, of a part of a work or of an element of equipment designed and produced for meeting precise and predetermined requirements when in working order, is jointly and severally liable for the obligations placed by Articles 1792, 1792-2 and 1792 3 on the hirer out of work who made use, without modification and in compliance with the directions of the manufacturer, of the work, part of work or element of equipment concerned.

For the purpose of this Article, shall be treated in the same way as manufacturers:

A person who imported a work, a part of work or an element of equipment manufactured abroad;

A person who presented it as his own work by having his name, his trade mark or any other distinguishing sign appear on it.

Art. 1792-5

(Act n° 78-12 of 4 Jan. 1978)

Any clause of a contract having the purpose, either of excluding or limiting the liability provided for in Articles 1792, 1792-1 and 1792-2, or of excluding “the warranties provided for in Articles 1792-3 and 1792-6” (Act n° 90-1129 of 19 Dec. 1990) or of limiting their extent, or setting aside or limiting the joint and several liability provided for in Article 1792-4, shall be deemed not written.

Art. 1792-6

(Act n° 78-12 of 4 Jan. 1978)

Approval is the act by which the building owner declares that he accepts the work with or without reservation. It occurs at the suit of the first requesting party, either amicably or, failing which, judicially. In any case, it shall be pronounced adversarily.

The warranty of perfected completion, to which a contractor is held during a period of one year, after the approval, extends to the repairs of all shortcomings indicated by the building owner, either through reservations mentioned in the memorandum of approval, or by way of written notice as to those revealed after the approval.

The periods required for the carrying out of the works of repair shall be fixed by common agreement by the building owner and the contractor concerned.

Failing such an agreement or in case of non-carrying out within the period fixed, the works may, after a notice of default remained ineffective, be carried out at the expenses and risks of the defaulting contractor.

The carrying out of the works required under the warranty of perfected completion shall be established by common agreement or, failing which, judicially.

The warranty does not extend to the works required to remedy the effects of normal wear or of use.

Art. 1793

Where an architect or a contractor has undertaken to erect a building at a fixed price, according to a plan settled and agreed with the owner of the ground, he may not ask for any increase in the price, either under the pretext of increase in labour or material, or under that of changes or additions made in the plan, unless those changes or additions have been authorized in writing and the price agreed with the owner.

Art. 1794.

-A master may, by his wish alone, terminate a contract at a fixed price, although the work has already begun, by compensating the contractor for all his expenses, for all his works, and for all that he could have earned in that undertaking.

Art. 1795

A contract of hiring of work is dissolved by the death of the worker, of the architect or of the contractor.

Art. 1796

But the owner is bound to pay to their succession, in proportion to the price given in the agreement, the value of the works done and that of the materials prepared, only where those works or materials can be useful to him.

Art. 1797

A contractor is responsible for the acts of the persons whom he employs.

Art. 1798

Masons, carpenters and other workers who have been employed in the construction of a building , or of other works made under a contract to do work, have an action against the person for whom the works have been done only up to the amount for which that person is debtor towards the contractor, at the time when their action is instituted.

Art. 1799

Masons, carpenters, locksmiths and other workers who enter directly into contracts for a definite lump sum, are subject to the rules prescribed in this Section: they are contractors as to the part they undertake.

Art. 1799-1

(Act n° 94-475 of 10 June 1994)

A building owner who enters into a private constructional works contract referred to in Article 1779, 3°, must warrant to the contractor the payment of the sums owed when they exceed a threshold fixed by decree in Conseil d'État 1.

Where a building owner has recourse to a specific credit for financing the works, the credit institution may not pay the amount of the loan to a person different from the ones mentioned in Article 1779, 3°, so long as the latter have not received payment of the whole of the claim arising from the contract corresponding to the loan. Payments shall be made by a written order and under the exclusive responsibility of the building owner into the hands of the person or of an agent appointed for that purpose.

Where a building owner does not have recourse to a specific credit or where he has recourse to it only in part, and failing a guarantee resulting from a particular stipulation, payment shall be warranted by a joint and several suretyship agreed to by a credit institution, an insurance company or an institution of collective guarantee, according to terms fixed by decree in Conseil d'État. So long as no guarantee has been given and the contractor is not paid for the works

carried out, the latter may suspend performance of the contract after a notice of default remained ineffective at the end of a period of fifteen days.

(Act n° 95-96 of 1 Feb. 1995) The provisions of the preceding paragraph shall not apply where the building owner enters into a constructional works contract on his own behalf and to meet needs which do not belong to an occupation relating to that contract.

The provisions of this Article shall not apply to the contracts concluded by a body referred to in Article L. 411-2 of the Building and Housing Code or by a semi-public company, for lodgings to be rented which have received an aid of the State and have been carried out by that body or company.

1 D. n°99-658 of 30 July 1999: 79 000 F (12 000 €)

CHAPTER IV - OF LEASES OF LIVESTOCK

Section I - General Provisions

Art. 1800

A lease of livestock is a contract by which one of the parties gives the other a stock of cattle to be kept, fed and cared for, under the terms agreed between them.

Art. 1801

There are several kinds of leases of livestock:

Simple or ordinary lease of livestock,

Lease of livestock by halves,

Lease of livestock given to a farmer or sharecropper.

There is also a fourth kind of contract improperly named lease of livestock.

Art. 1802

A lease of livestock may be made for any kind of animals capable of increase or of profit for agriculture or trade.

Art. 1803

Failing special agreement, those contracts are regulated by the following principles.

Section II - Of Ordinary Leases of Livestock

Art. 1804

An ordinary lease of livestock is a contract by which one person gives another cattle to be kept, fed and cared for, on condition that the lessee will profit from half the increase in stock and will also bear one-half of the loss.

Art. 1805

(Act of 9 June 1941)

The statement of the number, description and appraisal of the animals delivered, which appears in the lease, does not transfer ownership of them to the lessee. It has no other purpose than to be used as basis for the settlement to occur on the day when the contract comes to an end.

Art. 1806

A lessee is bound to give the care of a prudent owner to the preservation of the livestock.

Art. 1807

He is liable for a fortuitous event only where it was preceded by some fault on his part, without which the loss would not have occurred.

Art. 1808

In case of dispute, the lessee is bound to prove the fortuitous event, and the lessor is bound to prove the fault which he ascribes to the lessee.

Art. 1809

A lessee who is discharged by a fortuitous event is always bound to account for the hides of the animals.

Art. 1810

(Act of 5 Nov. 1941)

Where the livestock perishes in whole without a fault of the lessee, the loss falls on the lessor.

Where only a part of it perishes, the loss is borne jointly, according to the price of the original appraisal and that of the appraisal at the expiry of the lease.

Art. 1811

It may not be stipulated:

That the lessee shall bear the total loss of the livestock, although occurred through a fortuitous event and without his fault;

Or that he shall bear in the loss a greater share than in the profits;

Or that the lessor shall, at the end of the lease, set apart something more than the livestock which he has furnished.

Any agreement of this kind is void.

The lessee shall alone benefit from milk, manure and work of the animals leased.

The wool and the increase in stock shall be divided.

Art. 1812

A lessee may not dispose of any animal of a herd or flock, either from the stock or from the increase, without the consent of the lessor who himself may not dispose of it without the consent of the lessee.

Art. 1813

Where livestock is given to the tenant of another, notice of it must be given to the landlord from whom that tenant holds; otherwise, he may seize it and have it sold for what his tenant owes him.

Art. 1814

A lessee may not shear without the consent of the lessor.

Art. 1815

Where no time has been fixed by the agreement for the duration of a lease, it is deemed made for three years.

Art. 1816

The lessor may claim its termination sooner, where the lessee does not fulfil his obligations.

Art. 1817

(Act of 9 June 1941)

At the end of the lease or at the time of its termination, the lessor shall set apart animals of each kind in order to obtain a stock of cattle similar to that which he delivered, in particular as to number, breed, age, weight and quality of the animals; the excess shall be partitioned.

Where there are not enough animals to replenish the stock of cattle such as defined above, the parties shall account to each other for the loss on the basis of the value of the animals on the day when the contract comes to an end.

Any agreement under which, at the end of the lease or at the time of its termination, the lessee shall leave a stock of cattle of a value equal to the price of the appraisal of the one which he received, is void.

Section III - Of Leases of Livestock by Halves

Art. 1818

A lease of livestock by halves is a firm in which each contracting party furnishes one half of the cattle, which remain in common for profits or for loss.

Art. 1819

A lessee shall alone profit from milk, manure and works of the animals, as in an ordinary lease of livestock.

A lessor shall be entitled only to one half of the wool and of the increase.

Any agreement to the contrary is void, unless the lessor is the owner of the farm of which the lessee is farmer or sharecropper.

Art. 1820

All the other rules of an ordinary lease of livestock shall apply to a lease of livestock by halves.

Section IV - Of Leases of Livestock Granted by an Owner to his Farmer or Sharecropper

§ 1 - Of Livestock Leased to a Farmer

Art. 1821

(Act of 9 June 1941)

Such lease (also called iron lease of livestock) is one by which the owner of an agricultural holding gives it on lease on condition that at the expiry of the lease, the farmer shall leave the same stock of cattle as that which he received.

Art. 1822

(Act of 9 June 1941)

The statement of the number, description and appraisal of the animals delivered, which appears in the lease, does not transfer ownership of them to the lessee. It has no other purpose than to be used as basis for the settlement to occur on the day when the contract comes to an end.

Art. 1823

All profits belong to the farmer during the period of his lease, unless otherwise agreed.

Art. 1824

In leases of livestock leased to a farmer, the manure is not among the personal profits of the lessees, but belongs to the farm, for the cultivation of which it must be exclusively used.

Art. 1825

(Act of 5 Oct. 1941)

Loss, even total and by fortuitous event, falls wholly upon the farmer, unless otherwise agreed.

Art. 1826

(Act of 9 June 1941)

At the end of the lease or at the time of its termination, the lessee shall leave animals of each kind composing a stock of cattle similar to that which he received, in particular as to number, breed, age, weight and quality of the animals.

Where there is an excess, it belongs to him.

Where there is a deficit, settlement between the parties shall be made on the basis of the value of the animals on the day when the contract comes to an end.

Any agreement under which, at the end of the lease or at the time of its termination, the lessee shall leave a stock of cattle of a value equal to the price of the appraisal of the one which he received, is void.

§ 2 - Of Livestock Leased to a Sharecropper

Art. 1827

(Act of 5 Oct. 1941)

Where the livestock perishes in whole without a fault of the sharecropper, the loss falls on the lessor.

Art. 1828

It may be stipulated that the sharecropper shall surrender to the lessor his part of the fleece at a price below the ordinary value;

That the lessor shall have a larger share of the profit;

That he shall have half of the milk;

But it may not be stipulated that the sharecropper shall bear the whole loss.

Art. 1829

Such lease comes to an end with the lease of the farm.

Art. 1830

As to other issues, it shall be subject to all the rules of an ordinary lease of livestock.

Section V – Of the Contract Improperly Named Lease of Livestock

Art. 1831

Where one or several cows are given to be sheltered and fed, the lessor keeps ownership over them; he has only the profit of the calves which are born of them.

TITLE VIII bis

OF THE CONTRACT OF REAL ESTATE PROMOTION

(Act n° 71-579 of 16 July 1971)

Art. 1831-1

A contract of real estate promotion is an agency for the joint interest of both parties by which a person said "real estate promoter" binds himself towards a building owner to have the carrying out of a program of construction of one or several buildings undertaken for an agreed price and by way of contracts of hiring of services, as well as to undertake himself or have undertaken, for an agreed remuneration, all or part of the legal, administrative and financial formalities or transactions concurring for the same purpose. That promoter is the warrantor of the performance of the obligations placed on the persons with whom he has dealt on behalf of the building owner. "He is in particular responsible for the obligations resulting from Articles 1792, 1792-1, 1792-2 and 1792-3 of this Code" (Act n° 78-12 of 4 Jan. 1978).

Where a promoter binds himself to perform personnaly part of the operations of the program, he is bound, as to those operations, for the obligations of a hirer out of works.

Art. 1831-2

As to the promoter, the contract involves authority to conclude contracts, approve the works, close agreements and generally, do in the name of the building owner, all the transactions required by the carrying out of the program, up to the amount of the lump-sum agreed.

However, a promoter binds the building owner, by the loans he contracts or the acts of disposal he enters into, only under a special agency contained in the contract or in a subsequent instrument.

The building owner is bound to perform the undertakings contracted on his behalf by the promoter within the authority which the latter holds under a statute or the agreement.

Art. 1831-3

Where, before the completion of the program, the building owner assigns the rights he has on it, the assignee is substituted to him by operation of law, as to assets and liabilities, for the whole of the contract. “The assignor is warrantor of the performance of the obligations placed on the building owner by the contract assigned” (Act n° 72-649 of 11 July 1972).

Special agencies given to the promoter continue between the latter and the assignee.

The promoter may not substitute a third party for himself in the performance of the obligations which he has contracted with the building owner without the consent of the latter.

A contract of real estate promotion is effective against third parties only from the date of its entry on the land register.

Art. 1831-4

The task of a promoter comes to an end with the delivery of the work only where the accounts for construction have been definitely settled between the building owner and the promoter, all of which without prejudicing the actions for damages which may belong to the building owner against the promoter.

Art. 1831-5

Judicial arrangement or liquidation does not involve as of right the termination of a contract of real estate promotion. Any stipulation to the contrary shall be deemed not written.

TITLE IX

OF FIRMS AND COMPANIES

(Act n° 78-9 of 4 Jan. 1978)

CHAPTER I GENERAL PROVISIONS

Art. 1832

(Act n° 85-697 of 11 July 1985)

A firm is established by two or several persons which agree by a contract to appropriate property or their industry for a common venture with a view to sharing the benefit or profiting from the saving which may result therefrom.

It may be established, in the cases provided for by statute, through an act of will of one person alone.

The members bind themselves to contribute to losses.

Art. 1832-1

“Even where they use only community property for the contributions to a firm or for the acquisition of shares of a firm, two spouses alone or with other persons may be members of a same firm and participate together or not in the management of the firm” (Act n° 82-596 of 10 July 1982).

The advantages and gratuitous transfers resulting from a firm agreement between spouses may not be avoided because they would constitute disguised gifts, where their terms have been regulated by an authentic instrument.

Art. 1832-2

(Act n° 82-596 of 10 July 1982)

One spouse may not, under the penalty provided for in Article 1427, make use of community property in order to make a contribution to a firm or acquire non-negotiable shares of a firm without the other spouse being informed thereof and proof of it being adduced in the instrument.

The capacity of member is acknowledged to the spouse who makes the contribution or the acquisition.

The capacity of member is also acknowledged, for half of the shares subscribed or acquired, to the spouse who gave notice to the firm of his or her intention to be personally a member. Where he or she gives notice of his or her intention at the time of the contribution or acquisition, the acceptance or agreement of the members is effective as to both spouses. Where the notice is after the contribution or acquisition, the clauses requiring approval provided for this purpose in the articles of association or of partnership are available as against the spouse; at the time of the resolution on approval, the member spouse does not participate in the vote and his or her shares are not taken into account in calculating the quorum and the majority.

The provisions of this Article shall apply only to firms whose shares are not negotiable and only until dissolution of the community.

Art. 1833

Every firm must have lawful objects and be formed in the common interest of the members.

Art. 1834

The provisions of this Chapter shall apply to all firms and companies, unless otherwise provided for by statute by reason of their form or of their objects.

Art. 1835

The memorandum and the articles of association or of partnership must be drawn up in writing. They shall determine, in addition to the contributions of each member, the form, the

objects, the name, the registered place of business, the capital of the firm, the duration of the firm and its rules of functioning.

Art. 1836

Unless otherwise stipulated, the memorandum and the articles may be amended only by unanimous agreement of the members.

In no case may the commitments of a member be increased without his consent.

Art. 1837

Every firm whose registered place of business is located on the French territory is subject to the provisions of French law.

Third parties may avail themselves of the registered place of business determined in the articles, but the latter is not available as against them where the actual place of business is located elsewhere.

Art. 1838

The duration of a firm may not exceed ninety-nine years.

Art. 1839

Where the memorandum and the articles do not contain all the statements required by legislation or where a formality prescribed by it for the formation of a firm was omitted or irregularly completed, any person concerned may apply to the court for having the regularization of the formation ordered, by the imposition of a periodic penalty payment. The Government procurator’s office is entitled to sue for the same purposes.

The same rules shall apply in case of amendment of the memorandum and of the articles.

The action for purposes of regularization provided for in paragraph 1 is time-barred after three years from the registration of the firm or from the recording of the instrument amending the memorandum or the articles.

Art. 1840

The promoters, as well as the first members of the management, direction and administrative organs, are jointly and severally liable for the loss caused either by the want of a compulsory statement in the memorandum or the articles, or by the omission or irregular completion of a formality prescribed for the formation of the firm.

In case of amendment of the memorandum or of the articles, the provisions of the preceding paragraph shall apply to the members of the management, direction and administrative organs then in office.

The action is time-barred after ten years from the day when one or the other, according to the circumstances, of the formalities provided for in Article 1839, paragraph 3, has been completed.

Art. 1841

Firms which have not been thereto authorized by statute are prohibited to make public offerings or to issue negotiable securities, on pain of invalidity of the contracts concluded or of the securities issued.

Art. 1842

Firms other than the undisclosed partnerships referred to in Chapter III enjoy juridical personality from their registration.

Until registration the relations between members are governed by the firm agreement and by the general principles of law which apply to contracts and obligations.

Art. 1843

Persons who have acted on behalf of a firm in the making before registration are liable for the obligations arising from the acts so performed, jointly and severally where the firm is a merchant, jointly in the other cases. A firm regularly registered may take upon itself the undertakings entered into, which are then deemed to have been contracted by it as from the outset.

Art. 1843-1

A contribution of property or of a right subject to registration in order to be effective as against third parties may be registered before the registration of the firm and on condition that the latter takes place. From the latter, the effects of the formality retroact to the date of its fulfilment.

Art. 1843-2

The rights of each member in the capital of the firm are in proportion to his contribution at the time of the formation of the firm or in the course of its existence.

(Act n° 82-596 of 10 July 1982) Contributions in industry do not take part in the formation of the capital of the firm but give rise to an assigning of shares which entitles to the partition of profits and net assets, on condition that the losses are contributed to.

Art. 1843-3

Each member is debtor towards the firm for all that he has promised to contribute to it in kind, in money or in industry.

Contributions in kind shall be executed by transfer of the corresponding rights and by the actual availability of the property.

Where a contribution relates to ownership, the contributor is warrantor towards the firm in the same way as a seller towards his buyer.

Where it relates to enjoyment, the contributor is warrantor towards the firm in the same way as a lessor towards his lessee. However, where a contribution relating to enjoyment concerns generic things or any other property bound to be renewed during the duration of the firm, the contract transfers to the latter the ownership of the property contributed, on condition that he returns a same quantity, quality and value thereof; in that case, the contributor is warrantor in the way provided for in the preceding paragraph.

The member who was to contribute a sum to the firm and has not done so, becomes by operation of law and without notice, debtor for interests on that sum from the day when it should have been paid and without prejudice to greater damages, if there is occasion. “Furthermore, where calls for funds in order to pay up the full amount of capital have not been made within a statutory period, any person concerned may apply to the president of the court who shall decide by way of interim

relief proceedings either to order the administrators, directors and managers to carry out those calls for funds by imposing a periodic penalty payment, or to appoint an agent in charge of carrying out that formality" (Act n° 2001-420 of 15 May 2001).

The member who has bound himself to contribute his industry to the firm shall account to it for all the profits which he has gained through the activity which is the subject matter of his contribution.

Art. 1843-4

In all cases considering the assignment of a member's rights in the firm, or the redemption of those rights by the firm, the value of those rights shall be determined, in case of dispute, by an expert appointed, either by the parties, or failing an agreement between them, by order of the president of the court who shall decide by way of interim relief proceedings and whose judgment shall be final.

Art. 1843-5

(Act n° 88-15 of 5 Jan. 1988)

In addition to an action for compensation for the loss personally suffered, one or several members may institute an action on behalf of the firm against the directors. The claimants are entitled to seek compensation for the loss suffered by the firm; in case of award, the damages shall be allocated to the firm.

Shall be deemed not written any clause of the memorandum or of the articles leading to subordinate the bringing of an action on behalf of a firm to a preliminary opinion or to the authorization of the meeting of the members or which would imply anticipated waiver of the bringing of that action.

No decision of a meeting of members may lead to extinguish an action for compensation against the directors for fault committed in the fulfilment of their duties.

Art. 1844

Every member has the right to participate in collective decisions.

The co-owners of an undivided share of the capital shall be represented by a single proxy, chosen among the undivided owners or outside. In case of disagreement, the proxy shall be designated in court, at the suit of the first requesting party.

Where a share is burdened with a usufruct, the right to vote belongs to the bare-owner, except for decisions relating to the allocation of profits, in which case it is reserved for the usufructuary.

The memorandum or the articles may derogate from the two preceding paragraphs.

Art. 1844-1

Unless otherwise agreed, the share of each member in the profits and his contribution to losses are determined in proportion to his hare in the capital of the firm and the share of a member who has contributed only his industry is equal to that of the member who has contributed the least.

However, a stipulation by which a member is allotted the whole of the profit gained by the firm, or is released for the whole of the losses, the one by which a member is excluded in whole from the profit or is liable for the whole of the losses shall be deemed not written.

Art. 1844-2

(Act n° 78-753 of 17 July 1978)

A mortgage or any other security in rem on property of the firm may be given by virtue of powers resulting from resolutions or delegations established under private signatures, although the mortgage or of the security must be granted by an authentic instrument.

Art. 1844-3

The proper transformation of a firm into a firm of another type does not involve the creation of a new juridical person. It shall be the same as to extension of duration or any other amendment of the memorandum or articles.

Art. 1844-4

A firm, even in liquidation, may be absorbed by another firm or participate in the formation of a new firm, by way of merger.

It may also transfer its patrimony by way of split-off to existing or new firms.

Those dealings may occur between firms of different types.

They shall be decided, by each firm concerned, in the way provided for as to amendment of the memorandum or articles.

Where the dealing involves the creation of new firms, each of them shall be formed in accordance with the rules appropriate to the type of firm adopted.

Art. 1844-5

"The reuniting of all the shares of the capital into a single hand does not involve the dissolution of the firm by operation of law. Any person concerned may apply for that dissolution where the situation has not been regularized within the period of one year. The court may grant the firm a maximum period of six months to regularize the situation. It may not rule for dissolution where, on the day when it decides, that regularization has occurred" (Act n° 81-1161 of 30 Dec. 1981).

The fact that the usufruct of all the shares of capital belongs to the same person has no consequence as to the existence of the firm.

"In case of dissolution, it involves the universal transfer of the patrimony of the firm to the sole member, without there being occasion for liquidation. The creditors may object to the dissolution within a period of thirty days after the recording of the latter. A judicial decision shall dismiss the objection or order either the payment of the claims, or the constitution of warranties where the firm offers any and where they are considered sufficient. The transfer of the patrimony is carried out and the juridical person vanishes only at the end of the period for objection or, if there is occasion, where the objection has been dismissed in first instance or where the payment of the claims has been made or the warranties constituted" (Act n° 88-15 of 5 Jan. 1988)

"The provisions of paragraph 3 shall not apply to firms whose sole member is a natural person" (Act n° 2001-420 of 15 May 2001).

Art. 1844-6

An extension of the duration of a firm must be decided by a unanimous vote of the members, or, where the memorandum or articles so provide, by the majority required for their amendment.

One year at least before the date of the expiry of the firm, the opinion of the members must be taken for the purpose of deciding whether the duration of the firm must be extended.

Failing which, any member may apply to the president of the court ruling by interim ex parte order, for the appointment of a judicial agent in charge of instituting the consultation provided for above.

Art. 1844-7

A firm comes to an end:

1° By the expiry of the time for which it was formed, except for an extension of duration decided in accordance with Article 1844-6;

2° By the achievement or the extinction of its objects;

3° By annulment of the firm agreement;

4° By anticipated dissolution decided by the members;

5° By anticipated dissolution ordered by the court on application of a member for just reasons, notably in case of non-performance of his obligations by a member, or of disagreement between members which paralyses the running of the firm;

6° By anticipated dissolution ordered by the court in the case provided for in Article 1844-5;

7° “By the effect of a judgment ordering the winding-up or total transfer of the assets of the firm” (Act n° 88-15 of 5 Jan. 1988);

8° For any other reason specified in the memorandum or articles.

Art. 1844-8

The dissolution of a firm involves its liquidation, except for the cases provided for by Article 1844-4 “and by Article 1844-5, paragraph 3” (Act n° 88-15 of 5 Jan. 1988). It is effective against third persons only after it has been recorded.

A liquidator shall be appointed in accordance with the provisions of the memorandum or of the articles. Where they are silent, he shall be appointed by the members or, where the latter were unable to make that appointment, by order of the court. A liquidator may be dismissed in the same manner. The appointment and the dismissal are effective against third persons only after they have been recorded. Neither the firm nor third persons may, in order to elude their

undertakings, avail themselves of an irregularity in the appointment or dismissal of a liquidator, where the latter has been duly recorded.

The juridical personality of a firm still exists for the needs of liquidation until recording of its closing.

Where the closing of a liquidation has not happened within three years after the dissolution, the Government procurator's office or any person concerned may refer the matter to the court which shall have the liquidation instituted or completed, where it has begun.

Art. 1844-9

After paying the debts and reimbursing the capital of the firm, the partition of the assets shall be made among the members in the same proportion as their participation in the profits, except for clause or agreement to the contrary.

The rules relating to the partition of successions, including preferential allotment, shall apply to partitions between members of a firm or company.

However, the members may lawfully decide, either in the memorandum or articles, or by a separate resolution or instrument, that certain property shall be allotted to certain members. Failing which, any property contributed which is found in kind in the assets to be partitioned shall be allotted, on his request and on condition of adjustment, if there is occasion, to the member who had contributed it. That faculty shall be exercised before any other right to a preferential allotment.

All members, or some of them only, may also remain in undivided ownership of all or part of the property of the firm. Their relationships as to that property shall be then regulated, at the close of the liquidation, by the provisions relating to undivided ownership.

Art. 1844-10

Annulment of a firm may result only from the infringement of the provisions of Articles 1832, 1832-1, paragraph 1, and 1833 or from one of the grounds for annulment of contracts in general.

Any clause of the memorandum or of the articles contrary to a mandatory provision of this Title, the sanction of whose infringement is not annulment of the firm, shall be deemed not written.

Annulment of transactions or resolutions of the organs of a firm may result only from the infringement of a mandatory provision of this Title or from one of the grounds for annulment of contracts in general.

Art. 1844-11

An action for annulment is extinguished where the ground for annulment has ceased to exist on the day when the court rules on the merits in first instance, unless that annulment is based on the wrongfulness of the objects of the firm.

Art. 1844-12

In case of annulment of a firm or of transactions or resolutions subsequent to its formation, based on a defect in consent or on the disability of a member, and where regularization may take place, any person having an interest therein may put on notice the person who is able of doing so, either to regularize, or to sue for annulment within a period of six months on pain of being time-barred. The firm shall be informed of that putting on notice.

The firm or a member may submit to the court seized within the period provided for in the preceding paragraph, any measure appropriate to clear away the interest of the plaintiff, particularly through the redemption of his rights in the firm. In that case the court may, either rule for annulment or make compulsory the proposed measure where they have been previously adopted by the firm in the conditions provided for the amendments of the memorandum or of the articles. The vote of the member whose redemption of the rights is applied for is of no effect on the decisions of the firm.

In case of dispute, the value of the rights in the firm to redeem from a member shall be determined in accordance with the provisions of Article 1843-4.

Art. 1844-13

A court to which an action for annulment has been referred, may, even of its own motion, fix a period to allow for the remedy of the invalidities. It may not order annulment less than two months after the date of the originating process.

Where, in order to remedy an invalidity, a meeting must be convened, or a consultation of the members take place, and where proof is given of a proper notice convening that meeting or of the sending to the members of the text of the proposed resolutions with the documents which must be communicated to them, the court shall grant by judgment the period necessary for the members to come to a decision.

Art. 1844-14

The actions for annulment of a firm or of transactions or resolutions subsequent to its formation are time-barred after three years from the day when annulment was incurred.

Art. 1844-15

Where annulment of a firm is ordered, it puts an end, without retroactivity, to the performance of the contract.

As regards the juridical person which may have come into being, it produces the effects of a judicially ordered dissolution.

Art. 1844-16

Neither the firm nor the members may avail themselves of an annulment with regard to third parties in good faith. However, annulment resulting from a disability or from one of the defects in consent is available even against third parties by the person under a disability and his statutory representatives, or by the member whose consent was abused by error, deception or duress.

Art. 1844-17

An action for compensation based on the annulment of the firm or of transactions and resolutions subsequent to the formation is time-barred after three years from the day when the judgment of annulment has become res judicata.

The vanishing of the ground for annulment is not a bar to the bringing of an action for damages for the purpose of compensating the loss caused by the defect by which the firm, the transaction or the resolution was vitiated. That action is time-barred after three years from the day when the invalidity was remedied.

CHAPTER II - OF PARTNERSHIP FOR NON-COMMERCIAL PURPOSES

Section I - General Provisions

Art. 1845

The provisions of this Chapter shall apply to all firms for non-commercial purposes, unless they are derogated from by the particular statutory status to which some of them are subject.

Have non-commercial character all firms to which legislations does not attribute another character by reason of their form, nature or objects.

Art. 1845-1

The capital of a partnership shall be divided into equal shares.

(Act n° 2001-1168 of 11 Dec. 2001) The provisions of Chapter I of Title III of Book II of the Commercial Code relating to the variable capital of companies shall apply to partnerships for non-commercial purposes.

Section II – Of Management

Art. 1846.-A partnership shall be managed by one or several persons, partners or not, appointed either by the articles of partnership, or by a special act, or by a resolution of the partners.

The articles shall fix the rules for the designation of the manager or managers and the method of organization of the management.

Unless otherwise provided in the articles, a manager shall be appointed by a resolution of the partners representing more than half of the shares of the partnership.

Where the articles are silent, and where the partners have not decided otherwise at the time of the appointment, the managers shall be deemed appointed for the duration of the partnership.

Where, for whatever reason, a partnership is deprived of a manager, any partner may apply to the president of the court deciding by interim relief order for the designation of a judicial agent in charge of convening a meeting of the partners for the purpose of appointing one or several managers.

Art. 1846-1

Apart from the cases referred to in Article 1844-7, a partnership comes to an end through anticipated dissolution which a court may order on application of any person concerned, where it has been devoid of manager for more than one year.

Art. 1846-2

The appointment and cessation of duties of the managers must be recorded.

Neither a partnership nor third parties may avail themselves of an irregularity in the appointment of managers or in the cessation of their duties in order to elude their undertakings, where those decisions have been duly recorded.

Art. 1847

Where a juridical person carries on the management, its managers are subject to the same conditions and obligations and incur the same civil and penal liabilities as though they were managers on their own behalf, without prejudice to the joint and several liability of the juridical person which they direct.

Art. 1848

In the relationships between partners, a manager may do all the acts of management which the interest of the partnership requires.

Where there are several managers, they exercise those powers separately, except for the right which belongs to each of them to object to a transaction before it is concluded.

All of which failing a special provision in the articles on the method of administration.

Art. 1849

In the relationships with third parties, a manager binds the partnership through transactions which fall under the objects of the partnership.

In case of plurality of managers, they possess separately the powers provided for in the preceding paragraph. An objection made by one manager to the transactions of another manager is of no effect with regard to third parties, unless it is proved that they have had knowledge of it.

Clauses of the articles limiting the powers of the managers may not be invoked against third parties.

Art. 1850

Each manager is liable individually towards the partnership and towards third parties, either for violations of statutes and regulations, or for an infringement of the articles, or for faults committed in his management.

Where several managers have participated in the same acts, their liability is joint and several towards third parties and partners.

However, in their relationships between them, the court shall determine the contributory share of each in the compensation for the loss.

Art. 1851

Unless the articles provide otherwise, a manager may be dismissed by a resolution of the partners representing more than half of the shares of the partnership. Where a dismissal is decided without just reason, it may give rise to damages

A manager may also be dismissed by the courts for a legitimate cause, on application of any partner.

Unless otherwise provided, the dismissal of a manager, whether he is a partner or not, does not involve dissolution of the partnership. Where the dismissed manager is a partner, he may, unless the articles provide otherwise, or the other partners decide anticipated dissolution of the partnership, withdraw from it in the way provided for in Article 1869, paragraph 2.

Section III - Of Collective Resolutions

Art. 1852

Resolutions which exceed the powers conferred upon managers shall be passed according to the provisions of the articles or, failing such provisions, by the partners unanimously.

Art. 1853

Resolutions shall be passed by the partners convened in a meeting. The articles may also provide that they will result from a written consultation.

Art. 1854

Resolutions may also result from the consent of all the partners expressed in an instrument.

Section IV- Of Notice to Partners

Art. 1855

The partners are entitled to obtain, at least once a year, notice of the books and documents of the partnership, and to ask questions in writing on the management of the partnership, to which a reply must be made in writing within the period of one month.

Art. 1856

The managers must, at least once in the year, account for their management to the partners. That statement of accounts must include a comprehensive written report on the activity of the partnership during the year or the accounting period elapsed including a statement of the profits realized or foreseeable and of the losses incurred or foreseen.

Section V – Of the Liability of Partners with Regard to Third Parties

Art. 1857

With regard to third parties, partners are liable indefinitely for debts of the partnership in proportion to their share in the capital of the partnership on the date when falling due or on the day of cessation of payments.

A partner who has contributed only his industry is liable like the one whose contribution in the capital is the smallest.

Art. 1858

Creditors may sue a partner for payment of the debts of the partnership only after suing first and vainly the juridical person.

Art. 1859

All actions against partners who are not liquidators or their heirs and assigns are time-barred after five years from the time when the dissolution of the partnership has been recorded.

Art. 1860

Where there is insolvency, personal bankruptcy, judicial liquidation or judicial arrangement befalling a partner, unless the others unanimously decide to dissolve the partnership by anticipation or that dissolution is provided for by the articles, reimbursement shall be made, subject to the conditions set out in Article 1843-4, of the rights in the partnership of the party concerned, who then loses the status of partner.

Section VI – Of the Transfer of Shares of the Capital

Art. 1861

Shares of the capital may be transferred only with the approval of all the partners.

The articles may however agree that the approval will be obtained by a majority which they fix, or that it may be granted by the managers. They may also dispense from approval the transfers made to partners or to the spouse of one of them. Unless otherwise provided by the articles, transfers made to ascendants or descendants of the transferor are not subject to approval.

Notice shall be given of the planned transfer, with request for approval, to the partnership and to each one of the partners. Notice shall be given only to the partnership where the articles provide that the approval may be granted by the managers.

Where two spouses are simultaneously members of one partnership, the transfers made by one of them to the other must, in order to be valid, result from a notarial instrument or from an instrument under private signature having acquired an undisputable date otherwise than by the death of the transferor.

Art. 1862

Where several partners express their wish to acquire, they are, unless there is a clause or an agreement to the contrary, deemed purchasers in proportion to the number of shares which they held previously.

Where no partner stands as purchaser, the partnership may have the shares acquired by a third person designated by the other partners unanimously or according to the methods provided for by the articles. The partnership may also initiate the redemption of the shares for the purpose of cancelling them.

The transferor shall be given notice of the names of the proposed purchaser or purchasers, partners or third persons, or of the offer of redemption by the partnership, as well as of the price offered. In case of dispute on the price, the latter shall be fixed in accordance with the provisions of Article 1843 4, the whole without prejudice to the right of the transferor to keep his shares.

Art. 1863

Where no offer of redemption is made to the transferor within a period of six months after the last of the notifications provided for in Article 1861, paragraph 3, approval of the transfer shall be deemed granted, unless the other partners decide, within the same period, the anticipated dissolution of the partnership.

In the latter case, the transferor may cause that decision to lapse by making it known that he waives the transfer within a period of one month after the said decision.

Art. 1864

The provisions of the two preceding Articles may be derogated from only in order to modify the period of six months stared in Article 1863, paragraph 1, and provided the period stated in the articles be not over one year or below one month.

Art. 1865

A transfer of shares of capital must be drawn up in writing. It shall be made invokable against the partnership under the forms provided for in Article 1690 or, where the articles so stipulate, by transfer on the registers of the partnership.

It may be invoked against third persons only after completion of those formalities and after recording.

Art. 1866

Shares of the capital may be the subject of a pledge attested, either by an authentic instrument, or by an instrument under private signature served upon the partnership or accepted by it in an authentic instrument and giving rise to a recording whose date determines the rank of the pledgee creditors. Those whose instruments are recorded on the same day rank equally.

The prior charge of a pledgee creditor stands on the pledged rights on the capital through the sole fact of recording the pledge.

Art. 1867

Any partner may obtain from the other partners their approval of a plan of pledge under the same conditions as their approval of a transfer of shares.

A consent given to a plan of pledge involves approval of the transferee in case of forced sale of the shares of capital on condition that notice of the sale be given to the partners and the partnership at least one month before the sale.

Each partner may substitute himself for the purchaser within a period of five clear days from the sale. Where several partners exercise that faculty, they shall be, unless there is a clause or an agreement to the contrary, deemed purchasers in proportion to the number of shares which

they held previously. Where no partner exercises that faculty, the partnership may redeem the shares itself, for the purpose of cancelling them.

Art. 1868

Notice must be given likewise of a forced sale which does not result from a pledge to which the other partners have given their approval, one month before the sale to the partners or to the partnership.

The partners may, within that period, decide to dissolve the partnership or to acquire the shares in the way provided for in Articles 1862 and 1863.

Where a sale has taken place, the partners or the partnership may exercise the faculty of substitution which is theirs under Article 1867. The non-exercise of that faculty involves approval of the purchaser.

Section VII – Of the Withdrawal or Death of a Partner

Art. 1869

Without prejudice to the rights of third persons, a partner may withdraw totally or partially from the partnership, subject to the conditions laid down in the articles or, failing which, after authorization given by a unanimous resolution of the other partners. That withdrawal may also be authorized by a judicial decision for just reasons.

Unless Article 1844-9, paragraph 3, applies, the partner who withdraws is entitled to reimbursement of the value of his rights in the partnership, fixed in accordance with Article 1843-4, failing an amicable agreement.

Art. 1870

A partnership is not dissolved by the death of a partner, but continues with his heirs or legatees, unless the articles provide that they must be approved of by the partners.

It may however be agreed that the death will involve dissolution of the partnership or that it will continue with only the surviving partners.

It may also be agreed that the partnership will continue either with the surviving spouse, or with one or several of the heirs, or with any other person designated by the articles or where the latter so authorize, by a testamentary disposition.

Unless the articles provide otherwise, where the succession devolves upon a juridical person, the latter may become a partner only with the approval of the other partners, granted under the conditions provided for by the articles, or failing which, by unanimous agreement of the partners.

Art. 1870-1

Heirs or legatees who do not become partner are entitled only to the value of the shares in the capital of their predecessor in title. That value must be paid to them by the new holders of the shares or by the partnership itself where it has redeemed them for the purpose of cancelling them.

The value of these shares in the capital shall be determined on the day of death in the conditions provided for in Article 1843-4.

CHAPTER III - OF UNDISCLOSED PARTNERSHIP

Art. 1871

Partners may agree that the partnership will not be registered. The partnership is then called “undisclosed partnership”. It is not a juridical person and is not subject to registration.

The partners freely agree upon the objects, operation and methods of the undisclosed partnership, provided that the mandatory provisions of Articles 1832, 1832-1, 1833, 1836, paragraph 2, 1841, 1844, paragraph 1 and 1844-1, paragraph 2, be not derogated from.

Art. 1871-1

Unless a different organization has been provided for, the relationships between partners are governed, as may be thought proper, either by the provisions which apply to partnerships for non-commercial purposes, where the firm is of a non-commercial character, or, where it is of a commercial character, by those which apply to partnerships for commercial purposes.

Art. 1872

With regard to third parties, each partner remains owner of the property which he placed at the disposal of the partnership.

Shall be deemed undivided between the partners the property acquired by investment or re-investment of undivided funds during the partnership and that which was undivided before being placed at the disposal of the partnership.

It shall be likewise for that which the partners have agreed to place in undivided ownership.

It may furthermore be agreed that one of the partners is, with regard to the others, owner of all or part of the property which he acquires with a view to the carrying out of the objects of the partnership.

Art. 1872-1

Each partner contracts in his own name and is alone bound with regard to third parties.

However, where the undisclosed partners act as partners to third parties' knowledge, each one of them is bound with regard to the latter for the obligations arising from acts performed in that capacity by one of the others, jointly and severally where the partnership is a merchant, jointly, in the other cases.

It shall be the same as to a partner who, through his interference, has led the contracting party to believe that he intended to bind himself towards him or of whom it is proved that the undertaking has turned to his benefit.

In all cases, as to property deemed undivided under Article 1872, paragraph 2 and 3, shall apply in the relationships with third parties, either the provisions of Chapter VI of Title I of Book III of this Code, or, where the formalities provided for in Article 1873-2 have been completed, those of Title IX bis of this Book, all the partners being then, unless otherwise agreed, deemed managers of the undivided ownership.

Art. 1872-2

Where an undisclosed partnership is of indefinite duration, its dissolution may result at any time from a notice served by one of them on all the partners, provided that the notice be in good faith and not made inopportunely.

Unless otherwise agreed, no partner may request partition of the undivided property under Article 1872 so long as the partnership is not dissolved.

Art. 1873

The provisions of this Chapter shall apply to de facto partnerships.

TITLE IX bis

OF AGREEMENTS RELATING TO THE EXERCISE OF UNDIVIDED RIGHTS

(Act n° 76-1286 of 31 Dec. 1976)

Art. 1873-1

The persons having rights to be exercised on undivided property, as owners, bare owners or usufructuaries may enter into agreements relating to the exercise of those rights.

CHAPTER I – OF AGREEMENTS RELATING TO THE EXERCISE OF UNDIVIDED RIGHTS IN THE ABSENCE OF A USUFRUCTUARY

Art. 1873-2

Where they all consent thereto, undivided co-owners may agree to remain in undivided ownership.

On pain of annulment, the agreement must be drawn up in an instrument including the description of the undivided property and indication of the shares belonging to each undivided owner. Where the undivided property includes claims, the formalities of Article 1690 shall take place; where it includes immovables, the formalities of land registration shall take place.

Art. 1873-3

The agreement may be concluded for a determined duration which may not exceed five years. It may be renewed by an express decision of the parties. A partition may be instigated before the agreed term only where there are proper reasons for it.

The agreement may also be concluded for an indeterminate duration. In that case, a partition may be instigated at any time, provided it is not in bad faith or inopportune.

It may be decided that an agreement for a determined duration will be renewed by tacit extension of the period, for a determined or indeterminate duration. Failing such agreement, the undivided ownership shall be governed by Articles 815 and following at the expiry of the agreement for a determined duration.

Art. 1873-4

The capacity or power to dispose of the undivided property is required for an agreement designed to maintain undivided ownership.

The agreement may, however, be concluded on behalf of a minor, by his statutory representative alone; but in that case, the minor, become of age, may put an end to it, whatever its duration may be, within the year following his majority.

[repealed]

Art. 1873-5

The undivided co-owners may appoint one or several managers, chosen from among themselves or not. The methods of appointing and dismissing a manager may be determined by a unanimous decision of the undivided owners.

Failing such an agreement, a manager taken from among the undivided owners may be dismissed from his duties only by a unanimous decision of the other undivided owners.

A manager who is not an undivided owner may be dismissed in the way agreed upon among his principals or, failing which, by a decision taken by a majority of the undivided owners as to number and shares.

In all cases, dismissal may be ordered by the court on application of one undivided owner where the manager, through his mismanagement, imperils the interests of the undivided ownership.

Where a dismissed manager is an undivided owner, the agreement shall be deemed concluded for an indeterminate duration from his dismissal.

Art. 1873-6

A manager represents the undivided owners within his authority, either for transactions of civil life, or in court as plaintiff or defendant. He shall give, in a merely declaratory way, the names of all the undivided owners in the first procedural document.

A manager shall administer the undivided ownership and exercises for this purpose the powers “conferred on each spouse” (Act n° 85-1372 of 23 Dec. 1985) on community property. He may, however, dispose of tangible movables only for the needs of a normal use of the undivided ownership, or also where things difficult to preserve or subject to decay are concerned. Any clause extending the authority of a manager shall be deemed not written.

Art. 1873-7

A manager shall exercise the authority given by the preceding Article even where there is a person under a disability among the undivided owners.

Nevertheless, Article 456, paragraph 3, shall apply to leases granted in the course of an undivided ownership.

Art. 1873-8

Decisions which exceed the authority of a manager shall be passed unanimously, except for the manager, where he is himself an undivided owner, to avail himself of the remedies provided for by Articles 815-4, 815-5 and 815-6.

Where there are minors or adults under a disability among the undivided owners, the decisions referred to in the preceding paragraph give rise to the application of the rules of protection provided for in their favour.

It may be agreed between the undivided owners that in the absence of persons under a disability certain categories of decisions will be passed otherwise than unanimously. However, no undivided immovable may be transferred without the agreement of all the undivided owners unless it is under Articles 815-4 and 815-5 above.

Art. 1873-9

An agreement of undivided ownership may regulate the methods of administration in case of a plurality of managers. Failing special stipulations, the latter hold separately the authgority provided for by Article 1873-6, subject to the right of each to object to any transaction before it is concluded.

Art. 1873-10

Unless otherwise agreed, a manager is entitled to remuneration for his work. The terms of it shall be fixed by the undivided owners, to the exclusion of the party concerned, or, failing which, by the president of the tribunal de grande instance who shall give a provisional ruling.

A manager is liable as an agent for the faults he commits in his management.

Art. 1873-11

Each undivided owner may require notice of all documents relating to the management. A manager must, once a year, account for his management to the undivided owners. On that occasion, he shows in writing the profits made and the losses incurred or foreseeable.

Each undivided owner is obliged to participate in the expenses for preservation of the undivided property. Failing a special agreement, Articles 815-9, 815-10 and 815-11 of this Code shall apply to the exercise of the right of use and enjoyment, as well as to the sharing of profits and losses.

Art. 1873-12

In case of transfer of all or part of the rights of an undivided owner in the undivided property, or in one or several items of that property, the undivided co-owners enjoy the rights of pre-emption and substitution provided for by Articles 815-14 to 815-16 and 815-18 of this Code.

The agreement shall be deemed concluded for an indeterminate duration where, for any reason whatever, an undivided share devolves upon a person not belonging to the undivided ownership.

Art. 1873-13

The undivided owners may agree that upon the death of one of them, each survivor may acquire the share of the deceased or that the surviving spouse, or any other designated heir may have it allotted to him “on condition that he accounts for it to the succession according to its value at the time of the acquisition or of the allotment” (Act n° 78-627 of 10 June 1978).

Where several undivided owners or several heirs simultaneously exercise their faculty of acquisition or allotment, they shall be deemed, unless otherwise agreed, to acquire together the share of the deceased in proportion to their respective rights in the undivided ownership or the succession.

The provisions of this Article may not prejudice the application of the provisions of Articles 832 to 832-3.

Art. 1873-14

A faculty of acquisition or allotment lapses where its beneficiary has not exercised it through notice served on the surviving undivided owners or on the heirs of the predeceaser within the period of one month after the day when he has been given notice to come to a decision. That notice may not itself take place before the expiry of the period provided for in the Title Of Successions for making an inventory and deliberating.

Where no faculty of acquisition or allotment has been provided for, or where it has lapsed, the share of the deceased falls to his heirs or legatees. In such case, the agreement of undivided ownership shall be deemed concluded for an indeterminate duration from the day of the opening of the succession.

Art. 1873-15

Art. 815-17 shall apply to creditors of an undivided ownership, as well as to personal creditors of the undivided owners.

However, the latter may instigate partition only in the cases where their debtor could himself instigate it. In the other cases, they may sue for seizure and sale of the share of their debtor in the undivided ownership by complying with the formalities provided for by the Code of Civil Procedure. The provisions of Article 1873-12 shall then apply.

CHAPTER II – OF AGREEMENTS RELATING TO THE EXERCISE OF UNDIVIDED RIGHTS IN THE PRESENCE OF A USUFRUCTUARY

Art. 1873-16

Where undivided property is burdened with a usufruct, agreements, subject as a rule to the provisions of the preceding Chapter, may be concluded, either between the bare owners, or between the usufructuaries, or between the ones and the others. There may also be an agreement between those who are in undivided ownership as to enjoyment and the one who is bare owner of the whole property, as well as between a universal usufructuary and the bare owners.

Art. 1873-17

Where the usufructuaries were not parties to the agreement, third parties who have dealt with the manager of an undivided ownership may not avail themselves of the powers which would have been granted to him by the bare owners to the prejudice of the rights of usufruct.

Art. 1873-18.-Where an agreement concluded between usufructuaries and bare owners provides that decisions will be passed by a majority in number and in shares, the rights to vote attaching to shares is divided by halves between the usufruct and the bare ownership, unless the parties agreed otherwise.

Any expense exceeding the obligations of a usufructuary, such as defined in Articles 582 and following, binds him only with his consent given in the agreement itself or through a later instrument.

The transfer of full ownership of the undivided property may not be made without the consent of the usufructuary, except for the case where it is induced by the creditors entitled to sue for sale.

TITLE X

OF LOANS

Art. 1874

There are two kinds of loans:

That of things which can be used without being destroyed,

And that of things which are consumed by the use which is made of them.

The first kind is called loan for use or commodate;

The second is called loan for consumption , or simply loan.

CHAPTER I - OF LOANS FOR USE OR COMMODATES

Section I – Of the Nature of a Loan for Use

Art. 1875

A loan for use or commodate is a contract by which one of the parties delivers to the other a thing to be used, on condition that the borrower returns it after making use of it.

Art. 1876

Such loan is essentially gratuitous.

Art. 1877

The lender remains the owner of the thing loaned.

Art. 1878

Everything which may be the subject of legal transactions between private individuals, and which is not consumed by use may be the object of such an agreement.

Art. 1879

Undertakings which are formed by a commodate pass to the heirs of the person who lends, and to the heirs of the person who borrows;

But where a loan was made only on account of the borrower, and to him personally, then his heirs may not continue to enjoy the thing loaned.

Section II – Of the Undertakings of the Borrower

Art. 1880

The borrower is bound to take care of the keeping and preservation of the thing loaned like a prudent owner. He may use it only for the use determined by its nature or by the agreement; all of which, on pain of damages, if there is occasion.

Art. 1881

Where the borrower employs the thing for another use, or for a longer time than he ought, he is liable for the loss occurred, even through a fortuitous event.

Art. 1882

Where the thing loaned perishes through a fortuitous event of which the borrower could have preserved it by making use of his own, or where, being able to save only one of them, he preferred his own, he is liable for the loss of the other.

Art. 1883

Where the thing has been appraised when loaned, the loss which happens, even through a fortuitous event, falls on the borrower, unless otherwise agreed.

Art. 1884

Where the thing deteriorates through the sole effect of the use for which it was borrowed, and without any fault on the part of the borrower, he is not liable for the deterioration.

Art. 1885

The borrower may not retain the thing to offset what the lender owes him.

Art. 1886

Where the borrower has made some expense in order to use the thing, he may not reclaim it.

Art. 1887

Where several persons have jointly borrowed the same thing, they are jointly and severally liable towards the lender.

Section III – Of the Undertakings of One who Lends for Use

Art. 1888

The lender may take back the thing loaned only after the term agreed upon or, failing an agreement, after it has served the use for which it was borrowed.

Art. 1889

Nevertheless, where, during that period, or before the need of the borrower has ceased, the lender happens to be in a pressing and unforeseen need of the thing, the judge may, according to the circumstances, compel the borrower to return it to him.

Art. 1890

Where, during the term of the loan, the borrower has been compelled, for the preservation of the thing, to some extraordinary expense, necessary and so urgent that he was no able to inform the lender thereof, the latter is liable to reimburse him.

Art. 1891

Where the thing loaned has such defects that it may cause harm to the person who uses it, the lender is liable, where he knew of the defects and did not warn the borrower.

CHAPTER II – OF LOANS FOR CONSUMPTION OR SIMPLE LOANS

Section I – Of the Nature of the Loan for Consumption

Art. 1892

A loan for consumption is a contract by which one of the parties delivers to the other a certain quantity of things which are consumed by use, on condition that the latter shall return as much to him in the same kind and quality.

Art. 1893

Through such a loan, the borrower becomes the owner of the thing loaned; and the loss falls upon him, in whatever manner it occurs.

Art. 1894

Things which, although of the same kind, differ individually, such as animals, may not be given by way of loan of consumption: it is then a loan for use.

Art. 1895

The obligation which results from a loan of money is always for the numerical sum stated in the contract.

Where there is a rise or a fall in currency before the time of payment, the debtor must return the numerical sum loaned, and must do so only in the currency having legal tender at the time of the payment.

Art. 1896

The rule laid down in the preceding Article shall not apply, where the loan was made in bullions.

Art. 1897

Where bullions or commodities have been loaned, whatever the rise or fall in their price may be, the debtor shall always return the same quantity and quality, and return only that.

Section II – Of the Obligations of the Lender

Art. 1898

In a loan for consumption, the lender is held to the liability established by Article 1891 for a loan for use.

Art. 1899

The lender may not claim the things loaned back before the agreed time.

Art. 1900

Where no time has been fixed for restitution, the judge may allow the borrower a period according to the circumstances.

Art. 1901

Where it has only been agreed that the borrower would pay when he could, or he had the means, the judge shall fix a time for the payment, according to the circumstances.

Section III – Of the Undertakings of the Borrower

Art. 1902

The borrower is bound to return the things loaned, in the same quantity and quality and at the time agreed.

Art. 1903

Where he is unable to do so, he is bound to pay their value taking into account the time and the place where the thing was to be returned according to the agreement.

Where those time and place have not been regulated, payment shall be made at the price of the time and the place where the loan was made.

Art. 1904

(Act of 7 April 1900)

Where the borrower does not return the things loaned or their value at the agreed time, he owes interest thereon from the day of the notice or of the judicial claim.

CHAPTER III – OF LOANS AT INTEREST

Art. 1905

It is lawful to stipulate interest for a simple loan, either of money, or of commodities, or of other movable things.

Art. 1906

The borrower who has paid interest which was not stipulated may neither reclaim it, nor appropriate it to the capital.

Art. 1907

Interest is statutory or conventional. Statutory interest is fixed by statute1. Conventional interest may exceed statutory interest whenever a statute does not so prohibit2.

The rate of conventional interest must be fixed in writing.

1 Monetary and Financial Code Art. L. 313-2

2 Consumer Code Art. L. 313-1 to L. 313-3

Art. 1908

A receipt for capital given without reservations as to the interest gives rise to a presumption of payment of the latter and operates discharge of it.

Art. 1909

Interest may be stipulated upon a capital which the lender undertakes not to reclaim.

In that case, the loan takes the name of settlement of an annuity.

Art. 1910

That annuity may be settled in two ways, perpetually or for life.

Art. 1911

A perpetual annuity is essentially redeemable.

The parties may agree only that the redemption will not take place before a time which may not exceed ten years, or without notification has been given to the creditor at the period of notice which they have determined.

Art. 1912

The debtor of an annuity settled as perpetual may be compelled to redeem it:

1° Where he ceases to perform his obligations during two years;

2° Where he fails to furnish the lender with the security promised by the contract.

Art. 1913

The capital of an annuity settled as perpetual becomes also due in case of [judicial arrangement] or insolvency of the debtor.

Art. 1914

The rules relating to life annuities are laid down in the Title Of Aleatory Contracts.

TITLE XI

OF DEPOSITS AND OF SEQUESTRATIONS

CHAPTER I - OF DEPOSIT IN GENERAL AND OF ITS DIFFERENT KINDS

Art. 1915

As a rule, a deposit is a transaction by which one receives the thing of another, on condition of keeping it and returning it in kind.

Art. 1916

There are two kinds of deposits: actual deposit and sequestration.

CHAPTER II - OF ACTUAL DEPOSITS

Section I - Of the Nature and Essence of the Contract of Deposit

Art. 1917

An actual deposit is a contract essentially gratuitous.

Art. 1918

It may have as its object only movable things.

Art. 1919

It is complete only by the actual or symbolic handing over of the thing deposited.

A symbolic handing over is sufficient where the depositary is already in possession, in some other capacity, of the thing which one agrees to leave with him as a deposit.

Art. 1920

Deposit is voluntary or necessary.

Section II - Of Voluntary Deposits

Art. 1921

A voluntary deposit is concluded by the reciprocal consent of the person who makes the deposit and of the one who receives it.

Art. 1922

A voluntary deposit may only be made by the owner of the thing deposited or with his express or tacit consent.

Art. 1923 [repealed]

Art. 1924

"Where a deposit which exceeds the figure provided for in Article 1341 is not proved in writing" (Act n° 80-525 of 12 July 1980), the one who is sued as depositary is believed on his declaration, either as to the fact itself of the deposit, or as to the thing which was its object, or as to the fact of its restitution.

Art. 1925

A voluntary deposit may take place only between persons capable of contracting.

Nevertheless, where a person capable of contracting accepts a deposit made by a person under a disability, he is liable for all the obligations of a true depositary; he may be sued by the guardian or administrator of the person who made the deposit.

Art. 1926

Where a deposit was made by a person who is capable to a person who is not, the person who made the deposit has only a claim for the recovery of the thing deposited, so long as it exists in the hands of the depositary, or a claim in restitution up to the amount of the benefit derived by the latter.

Section III - Of the Obligations of a Depositary

Art. 1927

A depositary must take, in the keeping of the thing deposited, the same care as he does in the keeping of the things which belong to him.

Art. 1928

The provision of the preceding Article shall be applied more strictly:

1° Where the depositary has volunteered for receiving the deposit;

2° Where he has stipulated a salary for the keeping of the deposit;

3° Where the deposit has been made solely in the interest of the depositary;

4° Where it has been expressly agreed that the depositary would be liable for any kind of fault.

Art. 1929

A depositary is not, in any case, liable for the accidents of force majeure, unless he was given notice to return the thing deposited.

Art. 1930

He may not make use of the thing deposited, without the express or implied permission of the depositor.

Art. 1931

He may not attempt to know what the things are which have been deposited with him, when they have been entrusted to him in a closed chest or under a sealed cover.

Art. 1932

A depositary must return the exact same thing which he has received.

Thus, a deposit of sums of money must be returned in the same coins in which it was made, either in the case of increase or in the case of decrease of their value.

Art. 1933

A depositary is only bound to return the thing deposited in the condition in which it is at the time of restitution. Deteriorations which did not occur through his act shall be borne by the depositor.

Art. 1934

A depositary from whom the thing was taken away through a force majeure , and who has received a price or something in its place, must restore what he has receive in exchange.

Art. 1935

An heir of the depositary, who has sold in good faith the thing of whose deposit he was not aware, is only bound to return the price which he has received, or to assign his action against the buyer, where he has not received the price.

Art. 1936

Where a thing deposited has produced fruits which were collected by the depositary, he is obliged to return them. He owes no interest on money deposited, except from the day when he has been given notice to make the restitution.

Art. 1937

A depositary must return the thing deposited only to the one who has entrusted it to him, or to the one in whose name the deposit was made, or to the one who has been designated to receive it.

Art. 1938

He may not require the one who made the deposit to prove that he was the owner of the thing deposited.

Nevertheless, where he discovers that the thing has been stolen, and who the true owner is, he must give the latter notice of the deposit which was made to him, with demand to claim it within a determined and sufficient period. Where the one to whom notice has been given fails to claim the deposit, the depositary is lawfully discharged by the handing over of it to the one from whom he received it.

Art. 1939

In case of [...] death of the person who made the deposit, the thing deposited may be returned only to his heir.

Where there are several heirs, it must be returned to each of them for their share and portion.

Where the thing deposited is indivisible, the heirs must agree between them to receive it.

Art. 1940

(Act n° 85-1372 of 23 Dec. 1985)

Where the person who has made the deposit has been deprived of his powers of administration, the deposit may be returned only to the one who has the administration of the property of the depositor.

Art. 1941

(Act n° 85-1372 of 23 Dec. 1985)

Where a deposit has been made by a guardian or an administrator, in one of these capacities, it may be returned only to the person whom the guardian or administrator represented, if their management or administration has come to an end.

Art. 1942

Where the contract of deposit specifies the place where the restitution must be made, the depositary is bound to bring the thing deposited to that place. Where there are transport costs, they shall be charged to the depositor.

Art. 1943

Where the contract does not specify the place of restitution, it must be done in the very place of the deposit.

Art. 1944

A deposit must be returned to the depositor as soon as he claims it, even where the contract has fixed a determined period for the restitution; unless there is in the hands of the depositary an attachment or a forbidding to return and remove the thing deposited.

Art. 1945 [repealed by implication]

Art. 1946

All the obligations of a depositary come to an end where he happens to discover and prove that he is himself the owner of the thing deposited.

Section IV - Of the Obligations of the Person by Whom a Deposit was Made

Art. 1947

The person who made a deposit is bound to reimburse the depositary for expenses incurred for the preservation of the thing deposited, and to indemnify him for all the losses which the deposit may have occasioned him.

Art. 1948

A depositary may retain the deposit until full payment of what is owed him by reason of the deposit.

Section V – Of Necessary Deposits

Art. 1949

A necessary deposit is one which was forced by some accident, such as a fire, ruin, pillage, shipwreck or other unforeseen event.

Art. 1950

(Act n° 80-525 of 12 July 1980)

Proof by witnesses may be admitted as to a necessary deposit, although the amount concerned exceeds the figure provided for by Article 1341.

Art. 1951

As to other issues, a necessary deposit shall be governed by all the rules previously laid down.

Art. 1952

(Act n° 73-1141 of 24 Dec. 1973)

Innkeepers or hotel-keepers are liable, as depositaries, for clothes, luggage and various effects brought into their business premises by a traveller lodging with them; the deposit of effects of that kind shall be considered as a necessary deposit.

Art. 1953

(Act n° 73-1141 of 24 Dec. 1973)

They are liable for theft or for damage to those effects, whether the theft was committed or the damage caused by their servants or employees, or by strangers going to and fro in the hotel.

That liability is unlimited, notwithstanding any clause to the contrary, in case of theft or deterioration of all kinds of effects deposited within their hands or which they refused to receive without rightful reason.

In all other cases, damages due to a traveller are, to the exclusion of any agreed lower limitation, limited to the equivalent of one-hundred times the price of rental of lodging per day, except when the traveller proves that the damage he has suffered results from a fault of the person who shelters him or of the persons for whom the latter is responsible.

Art. 1954

(Act n° 73-1141 of 24 Dec. 1973)

Innkeepers or hotel-keepers are not liable for thefts or damage which happen through force majeure, nor for the loss which results from the nature or from a defect of the thing, on condition that they prove the fact which they allege.

In derogation to the provisions of Article 1953, innkeepers or hotel-keepers are responsible for the objects left in vehicles parked on a place of which they have private enjoyment up to the amount of fifty times the price of rental of lodging per day.

Articles 1952 and 1953 shall not apply to living animals.

CHAPTER III – OF SEQUESTRATIONS

Section I – Of the Various Kinds of Sequestration

Art. 1955

Sequestration is either conventional or judicial.

Section II – Of Conventional Sequestration

Art. 1956

Conventional sequestration is a deposit made by one or several persons, of a thing in contest, into the hands of a third party who binds himself to return it, after the controversy is over, to the person who will be judged entitled to obtain it.

Art. 1957

Sequestration need not be gratuitous.

Art. 1958

Where it is gratuitous, it is governed by the rules of an actual deposit, subject to the differences hereinafter stated.

Art. 1959

Sequestration may have as its object not only movable effects, but also immovables.

Art. 1960

A depositary in charge of a sequestration may be discharged, before the end of the controversy, only by consent of all the interested parties, or for a reason judged rightful.

Section III – Of Judicial Sequestration or Deposit

Art. 1961

A court may order sequestration:

1° Of movables seized on a debtor;

2° Of an immovable or of a movable thing whose ownership or possession is in contest between two or several persons;

3° Of things which a debtor tenders in order to be discharged.

Art. 1962

The appointment of a judicial custodian produces reciprocal obligations between the attaching party and the custodian. A custodian must give the care of a prudent owner for the preservation of the things seized.

He must present them, either to the attaching party for being discharged in case of sale, or to the party against whose property execution has been levied, in case of cancellation of the seizure.

The obligation of an attaching party consists in paying the custodian the salary fixed by law.

Art. 1963

Judicial sequestration shall be given, either to a person agreed upon by the parties concerned, or to a person appointed by the judge of his own motion.

In either case, the one to whom a thing is entrusted is subject to all the obligations which a conventional sequestration involves.

TITLE XII

OF ALEATORY CONTRACTS

Art. 1964

An aleatory contract is a reciprocal agreement whose effects, as to advantages and to losses, either for all the parties, or for one or several of them, depend upon an uncertain event.

Such are:

Insurance contracts;

Bottomry contracts;

Gaming and betting;

Contracts for life annuity.

The first two are governed by maritime law.

CHAPTER I - OF GAMING AND BETTING

Art. 1965

Legislation does not grant any action for a gaming debt or for the payment of a bet.

Art. 1966

Games proper to train in the use of arms, foot or horse races, chariot races, tennis and other games of the same kind which involve skill and bodily exercise, are excepted from the precedent provision.

Nevertheless, the court may dismiss the complaint where the sum seems excessive.

Art. 1967

In no case may the loser recover what he has voluntarily paid, unless there was, on the part of the winner, deception, fraud or swindling.

CHAPTER II - OF CONTRACT FOR LIFE ANNUITY

Section I - Of the Requisites for the Validity of the Contract

Art. 1968

A life annuity may be settled for value, for a sum of money or for a valuable movable thing, or for an immovable.

Art. 1969

It may also be settled, purely gratuitously, by gift inter vivos or by will. It must then bear the forms required by legislation.

Art. 1970

In the case of the preceding Article, a life annuity may be abated, where it exceeds what one is allowed to dispose of; it is void, where it is for the benefit of a person incapable of receiving it.

Art. 1971

A life annuity may be settled either on the head of the one who furnishes the price of it, or on the head of a third person, who has no right to enjoy it.

Art. 1972

It may be settled on one or several heads.

Art. 1973

It may settled for the benefit of a third person, although the price is paid by another person.

In the latter case, although it has the character of a gratuitous transfer, it is not subject to the forms required for gifts; except for the cases of abatement and avoidance stated in Article 1970.

(Act n° 63-1092 of 6 Nov. 1963) Where, settled by spouses or one of them, an annuity is stipulated to be revertible in favour of the surviving spouse, the clause which imports that property is to revert to him or her may have the character of a gratuitous transfer or that of a transaction for value. In that latter case, the reimbursement or the indemnity owed by the beneficiary of the reversion to the community or to the succession of the predeceaser is equal to the value of the reversion of the annuity. Except for contrary intention of the spouses, an annuity is deemed to have been granted gratuitously.

Art. 1974

A contract for life annuity created on the head of a person who was dead at the day of the contract does not produce any effect.

Art. 1975

It shall be the same for a contract by which an annuity was created on the head of a person suffering from an illness of which he died within twenty days after the date of the contract.

Art. 1976

A life annuity may be settled at the rate which it please the parties to fix.

Section II - Of the Effects of the Contract between the Contracting Parties

Art. 1977

The one in whose favour a life annuity was settled for a price may apply for the termination of the contract where the grantor does not give the guarantees stipulated for its performance.

Art. 1978

The mere failure to pay the income of the annuity does not entitle the one in whose favour it is settled to apply for the reimbursement of the capital or to re-enter into the tenement transferred by him: he only has the right to seize and have the property of his debtor sold and to have ordered or agreed that, out of the proceeds of the sale, a sufficient sum be invested for the payment of the income.

Art. 1979

A grantor may not exonerate himself from paying the annuity, by offering to reimburse the capital, and waiving recovery of the income paid; he is bound to pay the annuity during the whole life of the person or persons on whose heads the annuity was settled, whatever the duration of the life of those persons may be and however onerous the payment of the annuity may have become.

Art. 1980

A life annuity is acquired by the annuitant only in proportion to the number of days he has lived.

Nevertheless, where it was agreed that it would be paid in advance, the instalment which ought to be paid is acquired from the day when its payment ought to be made.

Art. 1981

A life annuity may be stipulated to be exempt from execution only where it was settled gratuitously.

Art. 1982 [repealed by implication]

Art. 1983

The annuitant of an annuity may claim income only by proving his existence, or that of the person on whose head it was settled.

TITLE XIII

OF AGENCY

CHAPTER I OF THE NATURE AND FORM OF AGENCY

Art. 1984

An agency or power of attorney is a transaction by which a person gives to another the authority to do something for the principal and in his name.

An agency is formed only through acceptance of the agent.

Art. 1985

“An agency may be given by an authentic instrument or by an instrument under private signature, even by letter. It may also be given verbally, but proof of it by witness is received only in accordance with the Title Of Contracts or of Conventional Obligations in General "(Act n° 80-525 of 12 July 1980).

Acceptance of an agency may be only tacit and result from the performance of it effected by the agent.

Art. 1986

An agency is gratuitous, unless there is an agreement to the contrary.

Art. 1987

It is either special and for one or several deals only, or general and for all the affairs of the principal.

Art. 1988

An agency worded in general terms includes only acts of administration.

Where it is intended to transfer or mortgage, or do some other transaction relating to ownership, the agency must be express.

Art. 1989

An agent may do nothing beyond what is expressed in his agency: the authority to compromise does not include that to enter into an arbitration agreement.

Art. 1990

(Act n° 65-570 of 13 July 1965)

A non-emancipated minor may be chosen as an agent; but the principal has an action against him only in accordance with the general rules relating to the obligations of minors.

CHAPTER II - OF THE OBLIGATIONS OF THE AGENT

Art. 1991

An agent is bound to perform the agency so long as he responsible for it, and is liable for the damages which may result from his non-performance.

He is also bound at the death of the principal to complete a matter initiated, where there is danger in delay.

Art. 1992

An agent is liable not only for intentional breach, but also for faults committed in his management.

Nevertheless, the liability for faults is implemented less rigorously against the one whose agency is gratuitous than against the one receiving a salary.

Art. 1993

Every agent is bound to account for his management, and to return to the principal all that he received by virtue of his power of attorney, even where what he received was not owed to the principal.

Art. 1994

An agent answers for the one whom he has substituted for himself in his management: 1° where he did not receive the authority to substitute someone; 2° where that authority was granted to him without designation of a person and the one whom he has chosen was notoriously incompetent or insolvent.

In all cases, a principal may directly sue the person whom the agent has substituted for himself.

Art. 1995

Where there are several proxies or agents appointed by the same instrument, there is no joint and several liability between them, unless it is expressed.

Art. 1996

An agent owes interest on sums employed for his own use, from that use; and on those of which he is debtor for the balance, from the day when he is given notice.

Art. 1997

An agent who has given the party with whom he contracts, in that capacity, a sufficient knowledge of his authority is not held to any warranty for what has been made outside the scope of that authority, unless he has personally taken charge of it.

CHAPTER III - OF THE OBLIGATIONS OF THE PRINCIPAL

Art. 1998

A principal is bound to perform the undertakings contracted by the agent, in accordance with the authority granted to him.

He is bound for what may have been done outside its scope, only where he has expressly or tacitly ratified it.

Art. 1999

A principal must reimburse the agent for the advances and expenses which the latter made for the performance of the agency, and pay him his salary where it has been promised.

Where no fault may be ascribed to the agent, the principal may not dispense with making those reimbursements and payments, even if the matter did not succeed, and he may not have the amount of the expenses and advances reduced on the pretext that they could have cost less.

Art. 2000

A principal must also compensate the agent for the losses which the latter has incurred on the occasion of his management, without an imprudent act being ascribable to him.

Art. 2001

Interest on the advances made by the agent is owed to him by the principal, from the day of the advances which are proved.

Art. 2002

Where an agent has been appointed by several persons, for a common affair, each of them is jointly and severally liable towards him for all the effects of the agency.

CHAPTER IV - OF THE DIFFERENT WAYS IN WHICH AN AGENCY COMES TO AN END

Art. 2003

An agency comes to an end:

By the revocation of the agent;

By the renunciation of the agency by the latter;

By the [..] death, guardianship of adults or insolvency, either of the principal, or of the agent.

Art. 2004

A principal may revoke his power of attorney when he pleases and compel, if there is occasion, the agent to return to him, either the instrument under private signature which contains it, or the original of the power of attorney, where it has been delivered without being recorded, or the office copy, where the original has been kept.

Art. 2005

A revocation of which only the agent has been given notice is not effective against third parties who have dealt without knowing of that revocation, except for the remedy of the principal against the agent.

Art. 2006

The appointment of a new agent for the same affair involves revocation of the first one, from the day when notice of it has been given to the latter.

Art. 2007

An agent may renounce the agency by giving notice of his renunciation to the principal.

Nevertheless, where that renunciation prejudices the principal, he must be compensated by the agent, unless the latter is unable to continue the agency without himself suffering a considerable loss.

Art. 2008

Where an agent has no knowledge of the death of the principal or of one of the other causes which make an agency come to an end, what he has done in that ignorance is valid.

Art. 2009

In the above cases, the undertakings of the agent shall be performed with regard to third parties who are in good faith.

Art. 2010

In case of death of an agent, his heirs must give notice of it to the principal, and, in the meantime, attend to what the circumstances may require in the interest of the latter.

TITLE XIV

OF SURETYSHIP

CHAPTER I - OF THE NATURE AND EXTENT OF SURETYSHIP

Art. 2011

A person who makes himself surety for an obligation binds himself towards the creditor to perform that obligation, if the debtor does not perform it himself.

Art. 2012

A suretyship may exist only on a valid obligation.

One may nevertheless stand surety for an obligation, although it may be avoided by a defence purely personal to the obligor; for instance, in case of minority.

Art. 2013

A suretyship may not exceed what is owed by the debtor, nor be contracted under more onerous conditions.

It may be contracted for a part of the debt only, and under less onerous conditions.

A suretyship which exceeds the debt, or which is contracted under more onerous conditions, is not void: it is only reducible to the extent of the principal obligation.

Art. 2014

One may become surety without an order of the person for whom one becomes bound, and even without his knowledge.

One may also become surety, not only of the principal debtor, but also of the person who has given security for him.

Art. 2015

Suretyship is not presumed; it must be express, and one may not extend it beyond the limits within which it was contracted.

Art. 2016

Indefinite suretyship of a principal obligation extends to the accessories of the debt, even to the costs of the first claim , and to all those subsequent to the notice given of it to the surety.

(Act n° 98-657 of 29 July 1998) Where that suretyship is contracted by a natural person, the latter shall be informed by the creditor of the evolution of the amount of the claim guaranteed and of those accessories at least once a year at the date agreed between the parties or, failing which, at the anniversary date of the contract, on pain of forfeiture of all the accessories of the debts, costs and penalties.

Art. 2017

The undertakings of the sureties pass to their heirs [..].

Art. 2018

A debtor compelled to give a surety must present one who has capacity to contract, sufficient property to answer for the object of the obligation, and whose domicile is in the territory of the cour d'appel where it must be given.

Art. 2019

The solvency of a surety is appreciated only with regard to his landed property except in matters of commerce and where the debt is moderate.

Regard shall not be had to immovables in dispute or whose seizure and forced sale would be too difficult because of remoteness of their location.

Art. 2020

Where a surety received by the creditor, voluntarily or in court, becomes afterwards insolvent, a new one must be given.

The sole exception to that rule takes place where the surety was given only under an agreement by which the creditor has required such a person as surety.

CHAPTER II - OF THE EFFECTS OF SURETYSHIP

Section I - Of the Effect of Suretyship between the Creditor and the Surety

Art. 2021

A surety is bound towards the creditor to pay him only upon the debtor’s failure, whose property must be previously exhausted, unless the surety has renounced the benefit of seizure and sale, or unless he is bound jointly and severally with the debtor, in which case the effect of his undertaking is governed by the principles established for joint and several debts.

Art. 2022

A creditor is bound to exhaust the main debtor’s property only where the surety requires him to do so, on the institution of proceedings against the latter.

Art. 2023

A surety who requires seizure and sale must point out to the creditor the property of the principal debtor and furnish a sufficient sum to have the proceedings carried out.

He may not point out property of the principal debtor situated out of the arrondissement of the cour d’appel of the place where payment must be made, nor property which is in litigation, nor that which is mortgaged for the debt and no longer in the possession of the debtor.

Art. 2024

Whenever the surety has pointed out the property authorized by the preceding Article and has furnished a sufficient sum to have the seizure and sale carried out, the creditor is, to the extent of the property pointed out, liable towards the surety for the insolvency of the principal debtor which has occurred in consequence of his failure to institute proceedings. “In any case, the amount of the debts resulting from a suretyship may not have the effect of depriving a natural person who stood as surety of a minimum income fixed by Article L. 331-2 of the Consumer Code” (Act n° 98-657 of 29 July 1998).

Art. 2025

Where several persons have become surety of the same debtor for a same debt, each one is liable for the whole debt.

Art. 2026

Nevertheless, each one, unless he has renounced the benefit of division, may demand that the creditor previously divide his action and reduce it to the part and portion owed by each surety.

Where, at the time when one of the sureties had the division effected, some of them were insolvent, that surety is proportionately liable for those insolvencies; but he may no longer be sued for insolvencies happening after the division.

Art. 2027

Where a creditor has himself and voluntarily divided his action, he may not go back on that division, although there were insolvent sureties even before the time when he consented thereto.

Section II - Of the Effect of Suretyship between the Debtor and the Surety

Art. 2028

A surety who has paid has his remedy against the principal debtor, whether the suretyship has been given with or without the knowledge of the debtor.

That remedy takes place both for the principal and for the interest and costs; nevertheless, the surety has a remedy only for the costs he has incurred since he has given notice to the principal debtor of the proceedings instituted against him.

He also has a remedy for damages, if there is occasion.

Art. 2029

A surety who has paid the debt is subrogated to all the rights which the creditor had against the debtor.

Art. 2030

Where there were several principal debtors, jointly and severally liable for a same debt, he who stood as surety for them all has, against each of them, a remedy for the recovery of the whole debt.

Art. 2031

A surety who has paid a first time has no remedy against a principal debtor who has paid a second time, where he has not informed him of his paying; except for his remedy for recovery against the creditor.

Where a surety has paid without being sued and without informing the principal debtor, he has no remedy against him in the case where, at the time of payment, that debtor would have had arguments to have the debt declared extinct; except for his remedy for recovery against the creditor.

Art. 2032

Even before paying, a surety may bring suit against the debtor to be indemnified by him:

1° Where he is sued in court for payment;

2° Where the debtor is [under a judicial arrangement] or insolvent;

3° Where the debtor was bound to discharge him within a certain time;

4° Where the debt has become due by the expiry of the term for which it was contracted;

5° At the end of ten years, where the principal obligation has no fixed term of maturity, unless the principal obligation, such as a guardianship, is not extinguishable before a determinate time.

Section III - Of Effect of Suretyship between Co-Sureties

Art. 2033

Where several persons have been sureties for the same debtor in regard to the same debt, a surety who has satisfied the debt has a remedy against the other sureties, for the share and portion of each of them.

But this remedy only takes place where the surety has paid in one of the cases mentioned in the preceding Article.

CHAPTER III - OF THE EXTINGUISHMENT OF SURETYSHIP

Art. 2034

The obligation which results from a suretyship is extinguished by the same causes as other obligations.

Art. 2035

A merger which takes place in the persons of a principal debtor and his surety, where they become heirs one to the other, does not extinguish the action of the creditor against the person who has stood as surety for the surety.

Art. 2036

A surety may set up against the creditor all the defences which belong to the principal debtor, and which are inherent to the debt.

But he may not set up the defences which are purely personal to the debtor.

Art. 2037

A surety is discharged where the subrogation to the rights, mortgages and prior claims of the creditor, may no longer take place in favour of the surety, by the act of that creditor. “Any clause to the contrary shall be deemed not written” (Act n° 84-148 of 1 March 1984).

Art. 2038

The voluntary acceptance on the part of a creditor of an immovable or of any property in payment of the principal debt, discharges the surety, even where the creditor is afterwards evicted therefrom.

Art. 2039

A mere extension granted by the creditor to the principal debtor does not discharge the surety, who may in that case sue the debtor to compel him to pay.

CHAPTER IV - OF STATUTORY AND JUDICIAL SURETIES

Art. 2040

Whenever a person is bound, by law or by a judgment, to give a surety, the surety tendered must fulfil the conditions required in Articles 2018 and 2019.

[repealed by implication]

Art. 2041

A person who cannot find a surety is admitted to give instead a pawn as sufficient pledge.

Art. 2042

A judicial surety may not demand the seizure and sale of the principal debtor’s property.

Art. 2043

A person who has merely become the surety of a judicial surety may not demand the seizure and sale of the property of the principal debtor and of the surety.

TITLE XV

OF COMPROMISES

Art. 2044

A compromise is a contract by which the parties settle an arisen controversy, or prevent a controversy from arising.

That contract must be made in writing.

Art. 2045

In order to compromise, one must have the capacity to dispose of the things included in the compromise.

A guardian may compromise on behalf of a minor or of an adult in guardianship only in accordance with Article 467, in the Title Of Minors, of Guardianship and of Emancipation; and he may compromise with a minor come of age with respect to the account of guardianship only in accordance with Article 472 of the same Title.

Communes and public institutions may compromise only with the express authorization of the President of the Republic.

Art. 2046

A compromise may take place as to civil interests resulting from an offence.

The compromise does not prevent prosecution by the Government procurator’s office.

Art. 2047

One may add to a compromise the stipulation of a penalty against the party who fails to perform it.

Art. 2048

Compromises are confined to their purpose: a renunciation made therein of all rights, actions and claims extends only to what relates to the controversy about which the compromise has arisen.

Art. 2049

Compromises regulate only the controversies which are comprised therein, whether the parties have expressed their intention in special or general terms, or that intention comes out as a necessary consequence of what is expressed.

Art. 2050

Where a person who has made a compromise as to a right which he had in his own name acquires afterwards a similar right in the name of another person, he is not bound by the compromise previously made with respect to the right newly acquired.

Art. 2051

A compromise made by one of the interested parties does not bind the others and may not be invoked by them.

Art. 2052

Compromises have, between the parties, the authority of res judicata of a final judgment.

They may not be attacked on account of an error of law, nor on account of loss.

Art. 2053

Nevertheless, a compromise may be rescinded, where there is an error as to the person or as to the subject-matter of the controversy.

It may also be rescinded where there is deception or duress.

Art. 2054

An action for rescission of a compromise also lies where it has been made in execution of an instrument which is void, unless the parties have expressly dealt about the nullity.

Art. 2055

A compromise made on documents which have since then been found false is entirely void.

Art. 2056

A compromise made as to a suit come to an end owing to a judgment having force of res judicata, of which the parties or one of them were not aware, is void.

Where the judgment unknown to the parties was subject to appeal, the compromise is valid.

Art. 2057

Where the parties have compromised generally on all the matters which they might have with one another, the instruments which were then unknown to them and which may have been afterwards discovered, are not a ground for rescission, unless they have been kept through the act of one of the parties.

But the compromise is void where it relates to one matter only to which it is proved, by the newly discovered instruments, that one of the parties had no right.

Art. 2058

An error of calculation in a compromise must be corrected.

TITLE XVI

OF ARBITRATION AGREEMENTS

(Act n° 72-626 of 5 July 1972)

Art. 2059

All persons may make arbitration agreements relating to rights of which they have the free disposal.

Art. 2060

One may not enter into arbitration agreements in matters of status and capacity of the persons, in those relating to divorce and judicial separation or on controversies concerning public bodies and institutions and more generally in all matters in which public policy is concerned.

(Act n° 75-596 of 9 July 1975) However, categories of public institutions of an industrial or commercial character may be authorized by decree to enter into arbitration agreements.

Art. 2061

(Act n° 2001-420 of 15 May 2001)

Except where there are particular statutory provisions, an arbitration clause is valid in the contracts concluded by reason of a professional activity.

Art. 2062 to 2070 [repealed]

TITLE XVII

OF PLEDGES

Art. 2071

A pledge is a contract by which a debtor hands over a thing to his creditor as security for a debt.

Art. 2072

A pledge of a movable thing is called pawn.

That of an immovable thing is called antichresis.

CHAPTER I - OF PAWNS

Art. 2073

A pawn confers to the creditor the right of causing his debt to be satisfied out of the thing which is its subject-matter, by priority and in preference to the other creditors.

Art. 2074

(Act n° 80-525 of 12 July 1980)

That prior charge exists against third persons only where there exists an instrument, authentic or under private signature, duly registered, containing a declaration of the sum due, as well as of the species and the nature of the property pawned, or an annexed statement of their quality, weight and measures.

Art. 2075

(Act n° 80-525 of 12 July 1980)

Where a pawn attaches to intangible movables, such as movable claims, the instrument, authentic or under private signature, duly registered, must be served on the debtor of the claim pawned or accepted by him in an authentic instrument.

Art. 2075-1

(Act n° 72-626 of 5 July 1972)

The deposit of sums, effects or securities, judicially ordered for guarantee or as a provisional measure, involves the special lien and the prior charge of Article 2073.

Art. 2076

In all cases, the prior charge only subsists on the pawn where that pawn has been put and has remained in the possession of the creditor, or of a third person agreed upon between the parties.

Art. 2077

A pawn may be given by a third person for the debtor.

Art. 2078

A creditor may not dispose of the pawn in case of failure to pay; but he may have ordered in court that the pawn will remain with him in payment and up to the amount due, according to an appraisal made by experts, or that it will be sold by auction.

Any clause which authorizes a creditor to appropriate the pawn or to dispose of it without the above formalities is void.

Art. 2079

Until the debtor is dispossessed, if there is occasion, he remains the owner of the pawn which, in the hand of the creditor, is only a deposit which secures the prior charge of the latter.

Art. 2080

A creditor is liable, according to the rules laid down in the Title Of Contracts or of Conventional Obligations in General , for the loss or deterioration of the pawn resulting from his negligent conduct.

On his side, the debtor is accountable to the creditor for useful and necessary expenses which the latter has incurred for the preservation of the thing.

Art. 2081

Where a claim pawned is concerned, and that claim bears interest, the creditor may appropriate that interest to that which may be owed to him.

Where the debt for whose guarantee a claim was pawned does not itself bear interest, appropriation shall be made to the capital of the debt.

Art. 2082

Unless the holder of a pawn misuses it, a debtor may claim restitution thereof only after paying in full both the capital and the interest and costs of the debt for whose guarantee the pawn has been given.

Where there existed on the part of the same debtor, towards the same creditor, another debt contracted after the giving of the pawn, and become due before payment of the first debt, the creditor shall not be held to dispossess himself of the pawn before being paid in full for both debts, even if no stipulation was made for applying the pawn to the payment of the second one.

Art. 2083

A pawn is indivisible notwithstanding the divisibility of the debt between the heirs of the debtor or those of the creditor.

An heir of the debtor, who has paid his portion of the debt, may not claim restitution of his portion in the pawn, so long as the debt is not wholly discharged.

Reciprocally, an heir of the creditor, who has received his portion of the debt, may not return the pawn to the detriment of those of his co-heirs who are not paid.

Art. 2084

The above provisions shall not apply to commercial matters, nor to authorized pawnbroker's establishments, and as to which the statutes and regulations relating to them shall be followed.

CHAPTER II - OF PLEDGES OF IMMOVABLES

Art. 2085

A pledge of immovables may be established only in writing.

A creditor acquires by that contract only the faculty to collect the revenue of the immovable, on the condition that he appropriate it annually to the interest, if any is due to him, and then to the capital of his claim.

Art. 2086

Unless otherwise agreed, a creditor is bound to pay the taxes and annual charges of the immovable which he holds as pledge.

He must also, on pain of damages, provide for the maintenance and the proper and necessary repairs of the immovable, but he may deduct from the fruits all the expenses relating to those various purposes.

Art. 2087

A debtor may not claim the enjoyment of the immovable which he has delivered as pledge before entire discharge of the debt.

But a creditor who wishes to discharge himself from the obligations expressed in the preceding Article may always, unless he has renounced that right, compel the debtor to retake the enjoyment of his immovable.

Art. 2088

A creditor does not become the owner of the immovable by the mere failure to pay at the time agreed upon; any clause to the contrary is void; in that case he may enforce dispossession of his debtor by legal remedies.

Art. 2089

Where the parties have stipulated that the fruits will be set off against the interest, either totally, or up to a certain amount, that agreement shall be carried out, like any other which is not prohibited by law.

Art. 2090

The provisions of Articles 2077 and 2083 shall apply to the pledge of an immovable as well as to pawn.

Art. 2091

All that is said in this Chapter does not prejudice the rights which third parties may have on the tenement of the immovable delivered as pledge.

Where the creditor, holding by virtue of that title has furthermore, on the tenement, prior charges or mortgages, duly established and retained, he shall exercise them according to his rank and as any other creditor.

TITLE XVIII

OF PRIOR CHARGES AND MORTGAGES

CHAPTER I - GENERAL PROVISIONS

Art. 2092

Whoever has personally made himself liable is bound to fulfil his undertaking out of all his movable or immovable property, existing and to come.

Art. 2092-1 and 2092-2 [repealed]

Art. 2092-3 [repealed]

(Act n° 72-625 of 5 July 1972) Leases granted by a debtor under a seizure or attachment, whatever their duration may be, are not enforceable against the creditors who levy execution.

Art. 2093

The property of a debtor is the common pledge of his creditors; and the proceeds of it shall be distributed among them pro rata, unless there are lawful causes of priority between the creditors.

Art. 2094

The lawful causes of priority are prior charges and mortgages.

CHAPTER II - OF PRIOR CHARGES

Art. 2095

A prior charge is a right which the character of a claim gives to a creditor to have priority over the other creditors, even mortgagees.

Art. 2096

Among creditors who have prior charges, the priority is settled by the different characters of the prior charges.

Art. 2097

The creditors having prior charges who are in the same rank shall be paid pro rata.

Art. 2098

The prior charge by reason of the rights of the Public Treasury and the order in which it comes are regulated by the statutes which relate to them.

The Public Treasury may not, however, obtain a prior charge to the detriment of rights previously vested in third parties.

Art. 2099

Prior charges may be over movables or over immovables.

Section I - Of Prior Charges over Movables

Art. 2100

Prior charges are either general, or special over certain movables.

§ 1 - Of General Prior Charges over Movables

Art. 2101

Claims having precedence over the generality of movables are those hereinafter expressed, and are enforced in the following order:

1° Court costs;

2° Funeral expenses;

3° (Act of 30 Nov. 1892) Any expenses relating to the latest illness, whatever its outcome may have been, concurrently among those to whom they are owed;

4° (Act n° 79-11 of 3 Jan. 1979) Without prejudice to the possible application of the provisions of Articles L. 143-10, L. 143-11, L. 742-6 and L. 751-15 of the Labour Code:

The wages of domestic staff for the year elapsed and the current year;

The deferred salary resulting from the contract of employment established by Article 63 of the Decree of 29 July 1939 relating to French family and birth rate [Articles L. 321-13 to L. 321-21 of the Rural Code], for the year elapsed and the current year;

(Act n° 89-1008 of 31 Dec. 1989) The claim of the surviving spouse established by Article 14 of Act n° 89-1008 of 31 December 1989 relating to the development of commercial and craft concerns and to the improvement of their economic, legal and social environment, “and the claim of the surviving spouse established by Article L. 321-21-1 of the Rural Code” (Act n° 99-574 of 9 July 1999);

(Act n° 89-488 of 10 July 1989) The pay for the last six months of employees, apprentices, and the allowance owed by the employer to young people in training scheme of initiation to professional life, such as provided for in Article L. 980-11-1 of the Labour Code;

(Ord. N° 82-130 of 5 Feb. 1982) The allowance for the end of the contract provided for by Article “L. 122-3-4” (Act n° 90-9 of 2 Jan. 1990) of the Labour Code and the allowance to compensate for lack of job security provided for in Article L. 124-4-4 of the same Code;

The allowance owed by reason of failure to comply with the term of notice provided for in Article L. 122-8 of the Labour Code and the compensatory allowance provided for in Article L. 122-32-6 of the same Code;

The allowances owed for paid holidays;

The allowances for dismissal owed in compliance with collective labour agreements, collective agreements of branches, labour regulations, usages, and the provisions of Articles L. 122-9, “L. 122-32-6” (Act n° 81-3 of 7 Jan. 1981), L. 761-5 and L. 761-7 “as well as the allowance provided for in Article L. 321-6 of the Labour Code for the whole of the portion lower than or equal to the ceiling provided for in Article L. 143-10 of the Labour Code and for one-fourth of the portion higher than the said ceiling” (Act n° 90-9 of 2 Jan. 1990);

(Ord. n° 82-130 of 5 Feb. 1982) The allowances owed, if there is occasion, to employees under Articles L. 122-3-8, paragraph 2, L. 122-14-4, L. 122-14-5, paragraph 2, L. 122-32-7 and L. 122-32-9 of the Labour Code;

5° (Act n° 64-678 of 6 July 1964) The furnishing of supplies to a debtor and his family during the last year and, within the same period, the products delivered by an agricultural producer in the context of an approved long-term inter-professional agreement, “as well as the sums owed by any contracting party of a farmer in compliance with an approved standard contract” (Act n° 80-502 of 4 July 1980);

6° [repealed by implication]

7° (Act of 11 March 1932) The grants owed to workmen and employees by equalization funds and other approved bodies for servicing family allowances or by employers dispensed from joining such an institution under Article 74 f [repealed]of Book I of the Labour Code.

8° The claims of equalization funds or other approved bodies for servicing family allowances towards their adherents for the contributions which the latter have undertaken to pay them for purpose of payment of family allowances and equalization of the burdens resulting from the payment of said benefits.

§ 2 - Of Prior Charges over Particular Movables

Art. 2102

Claims having precedence over particular movables are:

1° Rents and farm-rents of immovables on the fruit of the year's crop, and on the price of everything which garnishes the house rented or the farm, and of everything which is used for the working of the farm: namely, for everything which is due, and for everything which shall become due, where the leases are authentic, or, where being under private signature, they have an undisputable date; and, in both cases, the other creditors have the right to relet the house or

the farm for the remainder of the lease, and to profit by the leases or rents, on condition, however, that they pay the owner everything which may still be owed to him.

And, failing authentic leases, or where, being under private signature, they do not have an undisputable date, for one year after the expiry of the current year.

(Act of 25 Aug. 1948) The same prior charge exists for the repairs incumbent upon the tenant and for everything relating to the execution of the lease. It also exists for all claims resulting, for the benefit of the owner or tenant, from the occupation of the premises, regardless of the basis thereof.

(Act of 24 March 1936) Nevertheless, the sums owed for seeds, for manure and ameliorators, for anti-cryptogamic and insect products, for products designed for the destroying of animal or plant parasites harmful to farming, or for the expenses of the year's crop, shall be paid out of the proceeds of the crop, and those owed for implements out of the proceeds of those implements, in priority to the owner in either case.

The owner may seize the movables which furnish his house or his farm, where they have been removed without his consent, and he retains his prior charge over them, provided he has made his claim; namely: where the furniture which garnished a farm is concerned, within forty day; and within fifteen days , where the furniture garnishing a house is concerned;

2° A claim on the pawn which is in the possession of the creditor;

3° Expenses incurred for the preservation of a thing;

4° The price of movable effects not paid, where they are still in the possession of the debtor, whether he has bought on credit or not;

Where the sale was not made on credit, the seller may even claim back those effects as long as they are in the possession of the buyer, and prevent a re-sale, provided the claim is made within eight days after the delivery, and the effects are in the same condition in which the delivery was made;

However, the seller's prior charge may only be enforced after that of the owner of the house or of the farm, unless it is proved that the owner knew that the furniture and other articles garnishing his house or his farm did not belong to the tenant;

No change is made in the statutes and customs of commerce relating to claims for recovery;

5° The supplies of an innkeeper , on the effects of a traveller which have been carried to his inn;

6° [repealed]

7° Claims resulting from abuses and unfaithful conducts of public officials in the fulfilment of their duties, on the funds of their pawn, and on the interest which may be owed thereon;

8° (Act of 28 May 1913) Claims arising from an accident for the benefit of the third persons injured in that accident or their assigns, on the indemnity of which the insurer, under a contract of liability insurance, admits that he is or has been judicially held debtor by reason of the contract of insurance.

No payment made to the insured person may be in full discharge as long as creditors with prior charges have not been paid off;

9° (Act of 1 Aug. 1941; Act of 28 June 1943) Claims arising from a contract of employment of the auxiliary employee of a home worker corresponding to the definition of Article 33 of Book I [Article L. 721-1] of the Labour Code, on the sums owed to that worker by the hirers of services.

Section II - Of Special Prior Charges over Immovables

(Ord. N° 59-71 of 7 Jan. 1959)

Art. 2103

Creditors having precedence over immovables are:

1° A seller, on the immovable sold, for payment of the price;

Where there are several successive sales whose price is owed in whole or in part, the first seller has priority over the second, the second over the third, and so on;

1° bis (Act n° 94-624 of 21 July 1994) Jointly with a seller and, if there is occasion, with a lender of funds mentioned in 2°, a syndicate of co-owners, on the fraction of co-ownership sold, for payment of the expenses and works mentioned in Articles 10 and 30 of Act n° 65-557 of 10 July 1965 establishing the status of co-ownership of built immovables, which relate to the current year and to the last four years elapsed.

However, the syndicate has priority over a seller and a lender of funds as to claims relating to the expenses and works of the current year and of the last two years elapsed.

2° (Act n° 71-579 of 16 July 1971) Even in the absence of subrogation, those who have procured the funds for the purchase of an immovable, provided it was authentically established, by the instrument of loan, that the sum was intended for that use, and by the receipt of the seller, that the payment was made out of the funds borrowed;

3° Co-heirs, on the immovables of the succession, for the warranty of the partitions made between them, and of balances or reversions on lots; [repealed by implication];

4° Architects, contractors, masons and other workers employed to erect, rebuild or repair buildings, canals and other works whatsoever, provided nevertheless that a memorandum has been previously drawn up by an expert appointed of its own motion by the tribunal de grande instance in whose territory the buildings are situated, for the purpose of establishing an inventory of the premises with respect to the works which the owner claims he intends to perform, and that the works, within six months at the most after their completion, have been accepted by an expert also appointed ex officio;

But the amount of the prior charge may not exceed the values established by the second memorandum, and it is reduced to the increase in value which exists at the time of the transfer of the immovable and resulting from the works which have been done thereon;

5° Those who have loaned the funds to pay or reimburse the workers, enjoy the same prior charge, provided that use is authentically established by the instrument of loan, and by the receipt of the workers, as was above laid down for those who have loaned funds for the acquisition of an immovable;

6° (D. n° 55-52 of 4 Jan. 1955) Creditors and legatees of a deceased person on the immovables of the succession, for the warranty of the rights which they hold under Article 878;

7° (Act n° 84-595 of 12 July 1984) Prospective owners by virtue of a contract of lease with option to sell regulated by Act n° 84-595 of 12 July 1984 defining lease with option to sell immovables on the immovable which is the subject matter of the contract, for the warranty of the rights which they hold under that contract.

Section III - Of General Prior Charges over Immovables

(Ord. N° 59-71 of 7 Jan. 1971)

Art. 2104

Claims having precedence over the generality of immovables are:

1° Court costs;

2° (Act n° 79-11 of 3 Jan. 1979) Without prejudice to the possible application of the provisions of Articles L. 143-10, L. 143-11, L. 742-6 and L. 751-15 of the Labour Code:

The wages of domestic staff for the year elapsed and the current year;

The deferred salary resulting from the contract of employment established by Article 63 of the Decree of 29 July 1939 relating to French family and birth rate [Articles L. 321-13 to L. 321-21 of the Rural Code], for the year elapsed and the current year;

(Act n° 89-1008 of 31 Dec. 1989) The claim of the surviving spouse established by Article 14 of Act n° 89-1008 of 31 December 1989 relating to the development of commercial and craft concerns and to the improvement of their economic, legal and social environment, “and the claim of the surviving spouse established by Article L. 321-21-1 of the Rural Code” (Act n° 99-574 of 9 July 1999);

(Act n° 89-488 of 10 July 1989) The pay for the last six months of employees, apprentices, and the allowance owed by the employer to young people in training scheme of initiation to professional life, such as provided for in Article L. 980-11-1 of the Labour Code;

(Ord. N° 82-130 of 5 Feb. 1982) The allowance for the end of the contract provided for by Article "L. 122-3-4" (Act n° 90-9 of 2 Jan. 1990) of the Labour Code and the allowance to compensate for lack of job security provided for in Article L. 124-4-4 of the same Code;

The allowance owed by reason of failure to comply with the term of notice provided for in Article L. 122-8 of the Labour Code and the compensatory allowance provided for in Article L. 122-32-6 of the same Code;

The allowances owed for paid holidays;

The allowances for dismissal owed in compliance with collective labour agreements, or collective agreements of branches, labour regulations, usages, and the provisions of Articles L. 122-9, "L. 122-32-6" (Act n° 81-3 of 7 Jan. 1981), L. 761-5 and L. 761-7 "as well as the allowance provided for in Article L. 321-6 of the Labour Code for the whole of the portion lower than or equal to the ceiling provided for in Article L; 143-10 of the Labour Code and for one-fourth of the portion higherer than the said ceiling" (Act n° 90-9 of 2 Jan. 1990);

(Ord. n° 82-130 of 5 Feb. 1982) The allowances owed, if there is occasion, to employees under Articles L. 122-3-8, paragraph 2, L. 122-14-4, L. 122-14-5, paragraph 2, L. 122-32-7 and L. 122-32-9 of the Labour Code.

Art. 2105

(D. n° 55-22 of 4 Jan. 1955)

Where, failing movables, the creditors having a prior charge enumerated in the preceding Article present themselves to be paid out of the proceeds of an immovable competing with other creditors having prior charges over the immovable, they have priority over the latter and enforce their rights in the order indicated in the said Article.

Section IV - How Prior Charges are Preserved

Art. 2106

(D. n° 55-22 of 4 Jan. 1955)

Between creditors, prior charges produce effect with regard to immovables only where they are given public notice by being registered at the land registry, in the manner determined by the following Articles and by Articles 2146 and 2148.

Art. 2107

(D. n° 55-22 of 4 Jan. 1955)

The claims enumerated in Article 2104 “and the claims of the syndicate of co-owners enumerated in Article 2103” (Act n° 94-624 of 21 July 1994) are exempt from the formality of registration.

Art. 2108

(D. n° 55-22 of 4 Jan. 1955)

A seller who has precedence or a lender who has procured funds for acquiring an immovable, preserve his prior charge by a registration which must be made, at his suit, in the form provided for in Articles 2146 and 2148, and within a period of two months after the instrument of sale; the prior charge ranks from the time of the said instrument.

The action for avoidance established by Article 1654 may not be brought after lapse of the seller’s prior charge, or failing registration of it within the period above fixed, to the detriment of third parties who have acquired rights on the immovable in the purchaser’s right and have registered them.

Art. 2108-1

(Act n° 67-547 of 7 July 1967)

In the case of a sale of a building to be erected agreed for future delivery in accordance with Article 1601-2, the prior charge of the seller or that of the lender of funds ranks from the

time of the instrument of sale where registration is made before the expiry of a period of two months from the acknowledgement of the completion of the immovable by an authentic instrument.

Art. 2109

(D. n° 55-22 of 4 Jan. 1955)

A coheir or coparcener preserves his prior charge over the property of each share or over the property auctioned for the balances and reversions or for the proceeds of the auction, by a registration made at his suit on each one of the immovables, in the form provided for in Articles 2146 and 2148, and within a period of two months after the act of partition or the auction [repealed by implication]; the prior charge ranks from the time of the said act or of the auction.

Art. 2110

Architects, contractors, masons and other workers employed to erect, rebuild or repair buildings, canals or other works, and those who, in order to pay and reimburse them, have loaned the funds whose use has been established, preserve their prior charge by the double registration made:

1° Of the memorandum which establishes the condition of the premises;

2° Of the memorandum of acceptance,

from the time of registration of the first memorandum.

Art. 2111

(D. n° 55-22 of 4 Jan. 1955)

Creditors and legatees of a deceased person preserve their prior charge by a registration made respecting each immovable of the succession, in the form provided for in Articles 2146 and 2148, and within four months of the opening of the succession; the prior charge ranks from the time of the said opening.

Art. 2111-1(Act n° 84-595 of 12 July 1984)

Prospective owners preserve their prior charge by a registration made at their suit respecting the immovable which is the subject matter of the contract of lease with option to sell, in the form provided for in Articles 2146 and 2148 and within a period of two months after the signature of that contract; the prior charge ranks from the time of the said contract.

Art. 2112

The assignees of these various preferential claims all exercise the same rights as the assignors, in their stead and place.

Art. 2113

(D. n° 55-22 of 4 Jan. 1955)

Mortgages registered on the immovables allocated to the warranty of claims which have precedence, within the period allowed by Articles 2108, 2109 and 2111 for requiring the registration of a prior claim, may not prejudice creditors who have a prior claim.

All preferential claims subject to the formality of registration, with respect to which the requisites above laid down in order to preserve the prior charge have not been fulfilled, do not nevertheless cease to be mortgages, but the mortgage ranks, with regard to third parties, only from the time of the registration.

CHAPTER III - OF MORTGAGES

Art. 2114

A mortgage is a right in rem on immovables allocated to the discharge of an obligation.

It is, by its nature, indivisible and subsists in entirety on all the immovables allocated, on each one and on each portion of those immovables.

It follows them, in whatever hands they may pass.

Art. 2115

A mortgage exists only in the instances and according to the forms authorized by law.

Art. 2116

It is either statutory, or judicial, or conventional.

Art. 2117

(D. n° 55-22 of 4 Jan. 1955)

A statutory mortgage is one which results from a statute.

A judicial mortgage is one which results from judgments.

A conventional mortgage is one which results from agreements.

Art. 2118

May alone be mortgaged:

1° Immovable property which may be the subject matter of legal transactions between private individuals, and its accessories deemed immovable;

2° The usufruct of the same property and accessories for the time of its duration.

Art. 2119

Movables may not be followed [in the hands of another] in consequence of a mortgage.

Art. 2120

No innovation is made by this Code to the provisions of maritime laws concerning ships and vessels.

Section I - Of Statutory Mortgages

Art. 2121

(Act n° 65-570 of 13 July 1965)

Independently of statutory mortgages resulting from other Codes or from particular statutes, the rights and claims to which a statutory mortgage is granted are:

1° Those of one spouse, on the property of the other;

2° Those of minors or adults in guardianship, on the property of a guardian or statutory administrator;

3° Those of the State, of departments, of communes and of public institutions, on the property of collectors and accounting administrators;

4° Those of a legatee, on the property of the succession, under Article 1017;

5° Those stated in Article 2101, 2°, 3°, 5°, 6°, 7° and 8°.

Art. 2122

(Act n° 65-570 of 13 July 1965)

With reservation both of the exceptions resulting from this Code, from other Codes or from particulars statutes and of the right of the debtor to avail himself of the provisions of Articles 2161 and following, a creditor benefiting from a statutory mortgage may register his right on all the immovables which currently belong to his debtor, subject to his complying with the provisions of Article 2146. Under the same reservations, he may have complementary registrations made respecting the immovables subsequently entered into the patrimony of his debtor.

Section II - Of Judicial Mortgages

Art. 2123

(D. n° 55-22 of 4 Jan. 1955)

A judicial mortgage results from adversary or default judgments, final or provisional, in favour of the one who has obtained them.

It results also from arbitral awards provided with an enforcement order, as well as from judicial decisions handed down in a foreign country and whose execution has been authorized by a French court.

With reservation of the right of the debtor to avail himself, either pending suit, or at any other time, of the provisions of Articles 2161 and following, a creditor who benefits by a judicial mortgage may register his right respecting all the immovables currently belonging to his debtor, subject to his complying with the provisions of Article 2146. He may, under the same reservations, have complementary registrations made respecting the immovables subsequently entered into the patrimony of his debtor.

Section III - Of Conventional Mortgages

Art. 2124

Conventional mortgages may be granted only by those who have the capacity of conveying the immovables which they burden with them.

Art. 2125

(Act of 31 Dec. 1910)

Those who have on an immovable only a right suspended by a condition, or avoidable in certain cases, or subject to rescission, may only grant a mortgage subject to the same conditions or to the same rescission, except for what relates to a mortgage granted by all the co-owners of an undivided immovable, which by way of exception retains its effect, whatever the subsequent result of the sale by auction or of the partition may be.

Art. 2126

The property of minors, of adults in guardianship and those of absentees, so long as its possession is conferred only temporarily, may be mortgaged only for the causes and in the forms established by law or by virtue of a judgment.

Art. 2127

A conventional mortgage may only be granted by an instrument drawn up in authentic form […repealed by implication].

Art. 2128

Contracts entered into in foreign countries may not establish a mortgage on immovables in France, unless there are provisions contrary to this principle in political statutes or in treaties.

Art. 2129

(D. n° 55-22 of 4 Jan. 1955)

The granting of a conventional mortgage is valid only where the authentic constitutive title of the claim or a subsequent authentic instrument declares in specific terms the nature and the location of each one of the immovables on which the mortgage is granted, as stated in Article 2146 below.

Art. 2130

(D. n° 55-22 of 4 Jan. 1955)

Property to come may not be mortgaged.

Nevertheless, where existing and unencumbered property is insufficient to secure the claim, a debtor may, in admitting that insufficiency, agree that each property which he may subsequently acquire be specially allocated thereto as the acquisitions proceed.

Art. 2131

Likewise, in case the existing immovable or immovables, burdened with the mortgage, have perished or suffered deteriorations, so that they have become insufficient for the security of the creditor, the latter may either enforce at once his reimbursement, or obtain an additional mortgage.

Art. 2132

A conventional mortgage is valid only where the sum for which it is granted is certain and determined by the instrument: where the claim resulting from the obligation is conditional as to its existence or undetermined as to its value, the creditor may require thr registration hereafter dealt with only up to the amount of an estimated value expressly declared by him, and which the debtor has the right to have reduced, if there is occasion.

Art. 2133

(D. n° 55-22 of 4 Jan. 1955)

A mortgage once granted extends to all the improvements happening to the mortgaged immovable.

Where a person possesses an existing right which permits him to build for his benefit on another's tenement, he may grant a mortgage on the buildings whose erection is begun or merely planned; in case of destruction of the buildings, the mortgage burdens by operation of law new buildings erected on the same place.

Section IV - Of the Rank of Mortgages with Respect to Each Other

Art. 2134

(D. n° 55-22 of 4 Jan. 1955)

Between creditors, a mortgage, either statutory, or judicial, or conventional, ranks only from the day of the registration made by the creditor at the land registry, in the form and manner prescribed by law.

Where several registrations are required on the same day as to the same immovable, that which is required by virtue of the instrument of title bearing the remotest date shall be deemed of prior rank, whatever the order resulting from the register provided for in Article 2200 may be.

(Act n° 98-261 of 6 April 1998) However, the registrations of separations of patrimony provided for by Article 2111, in the case referred to in Article 2113, paragraph 2, as well as those of the statutory mortgages provided for in Article 2121, 1°, 2° and 3°, shall be deemed of a rank prior to the one of any registration of judicial or conventional mortgages made on the same day.

(Act n° 98-261 of 6 April 1998) Where several registrations are made on the same day as to the same immovable, either by virtue of instruments of title provided for in the second paragraph but bearing the same date, or for the benefit of requiring parties vested with the prior charge or the mortgages referred to in the third paragraph, the registrations rank equally whatever the order of the above mentioned register may be.

The order of priority between creditors having a prior charge or mortgage and holders of warrants, insofar as the latter are secured on property deemed immovable, is determined by the dates on which the respective instruments have been given public notice, the recording of warrants remaining subject to the special statutes which regulate them.

Section V - Of Particular Rules for the Statutory Mortgage of Spouses

Art. 2135 [repealed]

Art. 2136

(Act n° 65-570 of 13 July 1965)

Where spouses have stipulated participation in acquisitions, the clause, except for agreement to the contrary, vests both by operation of law with the faculty to register a statutory mortgage to secure the claim in participation.

Registration may be made before dissolution of the matrimonial regime; but it has effect only from that dissolution and provided that the immovables burdened exist at this date in the patrimony of the debtor spouse.

In case of anticipated liquidation, a registration prior to the request has effect from the day of the latter, a subsequent registration having effect only from its date as stated in Article 2134.

A registration may also be made within the year which follows the dissolution of the matrimonial regime; it then takes effect from its date.

Art. 2137

(Act n° 85-1372 of 23 Dec. 1985)

Outside the case of participation in acquisitions, a statutory mortgage may be registered only by intervention of the court, as is explained in this Article and the following one.

Where one of the spouses institutes a claim for the purpose of having a debt against his or her spouse or the heirs of the latter established, he or she may, from the lodging of the claim, require a provisional registration of his or her statutory mortgage, by showing the original of the summons served, as well as a certificate from the clerk which attests that the matter has been referred to the court. The same right exists in case of counter-claim, upon showing of a copy of the pleadings.

(Act n° 65-570 of 13 July 1965) A registration is valid for three years and renewable. It is subject to the rules of Chapters IV and following of this Title.

Where the claim is entertained, the judgment shall be mentioned, at the suit of the plaintiff spouse, in the margin of the provisional registration, on pain of nullity of that registration, within a month after the day when it has become final. It constitutes the instrument of title for a final registration which takes the place of the provisional registration and which ranks at the date of the latter. Where the amount of the capital of the debt allowed and of its accessories exceeds the sum which the provisional registration secures, the excess may be maintained only by a registration made in accordance with the provisions of Article 2148 and taking effect from its date, as stated in Article 2134.

Where the claim is dismissed in full, the court, on request of the defendant spouse, shall order the striking off of the provisional registration.

Art. 2138

(Act n° 65-570 of 13 July 1965)

Likewise, where, during the marriage, there is occasion to transfer from one spouse to the other the administration of certain property, in accordance with Article 1426 or Article 1429, the court, either in the judgment itself which orders the transfer, or in a subsequent judgment, may decide that a registration of the statutory mortgage will be made respecting the immovables of the spouse who will have the responsibility of administering it. If so, it shall fix the sum for which registration will be made and designate the immovables which will be burdened with it. If not, it may nevertheless decide that the registration of a mortgage will be replaced by establishing a pawn, of which it itself shall determine the terms.

Where, later on, new circumstances seem to require it, the court may always decide, by judgment, that either a first registration or complementary registrations will be made or that a pawn will be established.

The registrations provided for by this Article shall be made and renewed at the request of the Government procurator’s office.

Art. 2139

(Act n° 65-570 of 13 July 1965)

Where a statutory mortgage has been registered under Articles 2136 or 2137, and unless an express clause of the ante-nuptial agreement prohibits it, the spouse who profits by the registration may agree, to the benefit of the other spouse’s creditors or of his or her own

creditors, to an assignment of his or her rank or to a subrogation to the rights resulting from his or her registration.

It shall be the same as to a statutory mortgage or, possibly, a judicial mortgage securing periodical payments ordered, or liable to be ordered “to a spouse, for himself or herself” (Act n° 85-1372 of 23 Dec. 1985) or for the children.

Where the spouse who profits by the registration, by refusing to agree to an assignment of rank or to a subrogation, prevents the other spouse from creating a mortgage which the interest of the family would require or where he or she is unable to express his or her intention, the judges may authorize that assignment of rank or that subrogation subject to the conditions which they deem necessary for the protection of the rights of the spouse concerned. They have the same powers where the ante-nuptial agreement contains the clause referred to in the first paragraph.

Art. 2140

(Act n° 65-570 of 13 July 1965)

Where a mortgage has been registered under Article 2138, an assignment of rank or a subrogation may, for the duration of the transfer of administration, result only from a judgment of the court which has ordered that transfer.

As soon as the transfer of administration comes to an end, an assignment of rank or a subrogation may be made in the way provided for in Article 2139.

Art. 2141

(Act n° 65-570 of 13 July 1965)

Judgments given under the two preceding Articles shall be handed down in the forms regulated by the Code of Civil Procedure.

Subject to the provisions of Article 2137, a statutory mortgage of spouses is subject, as to renewal of registrations, to the rules of Article 2154.

Art. 2142

(Act n° 65-570 of 13 July 1965)

The provisions of Articles 2136 to 2141 shall be made known to spouses or future spouses in the way provided for by a decree.

Section VI - Of Particular Rules for the Statutory Mortgage of Persons in Guardianship

(D. n° 55-22 of 4 Jan. 1955)

Art. 2143

(Act n° 64-1230 of 14 Dec. 1964)

At the opening of any guardianship, the family council, after hearing the guardian, shall decide whether a registration must be demanded on the immovables of the guardian. If so, it shall fix the sum for which the registration will be made and designate the immovables which will be burdened with it. If not, it may nevertheless decide that the registration of a mortgage will be replaced by the establishing of a pawn, of which it itself shall determine the terms.

In the course of the guardianship, the family council may always order, where the interests of the minor or of the adult in guardianship seem to require it, that either a first registration or complementary registrations will be made or that a pawn will be established.

In the cases where statutory administration takes place under Article 389, the judge of guardianships, who gives judgment either of his own motion or on the request of a relative by blood or by marriage or of the Government procurator’s office, may likewise decide that a registration will be made on the immovables of the statutory administrator, or that the latter must establish a pawn.

The registrations provided for by this Article shall be made at the request of the clerk of the judge of guardianships, and the costs shall be charged to the account of the guardianship.

Art. 2144

A ward, after his or her coming of age or emancipation, or an adult in guardianship, after withdrawing of the guardianship of adults, may require the registration of his or her statutory mortgage or a complementary registration, within a period of one year.

This right may, furthermore, be exercised by the heirs of the ward or of the adult in guardianship within the same period, and in case of death of the person under a disability before the ending of the guardianship or the withdrawing of the guardianship of adults, within the year of the death.

Art. 2145

During the minority and the guardianship of adults, a registration made by virtue of Article 2143 must be renewed by the clerk of the tribunal d'instance, in accordance with Article 2154 of the Civil Code.

CHAPTER IV - OF THE MODE OF REGISTRATION OF PRIOR CHARGES AND MORTGAGES

(D n° 55-22 of 4 Jan. 1955)

Art. 2146

Shall be registered at the land registry of the location of the property:

1° Prior charges over immovables, subject to the sole exceptions referred to in Article 2107;

2° Statutory, judicial or conventional mortgages.

A registration which may never be made by the registrar of his own motion may take place only for a sum and for immovables which are determined, subject to the conditions laid down in Article 2148.

In any case, the immovables respecting to which a registration is required must be individually designated, with indication of the commune where they are situated, exclusive of any general designation, even limited to a given territorial area.

Art. 2147

Creditors who have a prior charge or mortgage may not profitably make registration respecting to the preceding owner, from the recording of the transfer made for the benefit of a third party. Notwithstanding that recording, a seller, lender of funds for acquisition and a coparcener may profitably register, within the periods provided for in Articles 2108 and 2109, the prior charges which Article 2103 confers upon them.

A registration produces no effect between the creditors of a succession where it has been made by one of them only after the death, in case the succession is accepted only under benefit of inventory or is declared vacant. However, the prior charges granted to a seller, a lender of funds for an acquisition, a coparcener, as well as to the creditors and legatees of the deceased, may be registered within the periods provided for in Articles 2108, 2109 and 2111, notwithstanding an acceptance under benefit or the vacancy of the succession.

(Ord. N° 59-71 of 7 Jan. 1959) In case of seizure of immovables, of [judicial liquidation] or of judicial arrangement, the registration of prior charges and mortgages produces the effects regulated by the provisions of the Code of Civil Procedure and by those on [judicial liquidation] and judicial arrangement.

Art. 2148

(D. n° 55-52 of 4 Jan. 1955; Act n° 56-780 of 4Aug. 1956; D. n° 59-89 of 7 Jan. 1959; Ord. N° 67-839 of 28 Sept. 1967; Act n° 98-261 of 6 April 1998)

The registration of prior charges and mortgages shall be made by the land registrar following the filing of two schedules dated, signed and certified to be corresponding to each other by the signatory of the certificate of identity provided for in paragraph 13 of this Article; a decree in Conseil d'État shall determine the requirements as to form which the schedule designed to be kept in the land registry must comply with. In the case where the registrant did not use a prescribed form, the registrar shall nevertheless accept the deposit, subject to the provisions of the penultimate paragraph of this Article.

However, in order to have judicial mortgages or securities registered, a creditor shall present, either himself or through a third party, to the land registrar:

1° The original, an authentic office copy or a literal extract from the judicial decision giving rise to the mortgage, where the latter results from the provisions of Article 2123;

2° The authorization of the judge, the judicial decision or the instrument of title in matters of judicial provisional securities.

Each of the schedules shall contain exclusively, on pain of rejection of the formality:

1° The designation of the creditor, of the debtor or of the owner, where the debtor is not the owner of the burdened immovable, in accordance with paragraph 1 of Articles 5 and 6 of the Decree of 4 January 1955;

2° The election of domicile, by the creditor, in any place situated in France, in overseas departments or in the territorial authorities of Saint-Pierre -et-Miquelon;

3° The indication of the date and nature of the instrument of title giving rise to the security or of the instrument of title creating the claim as well as the origin of the obligation secured by the prior charge. Where a notarial instrument is concerned, the name and residence of the draftsman shall be specified. As to the registrations required in compliance with the provisions referred to in Articles 2111 and 2121, 1°, 2° and 3°, the schedules shall set out the origin and nature of the claim;

4° The indication of the capital of the claim, of its accessories and of the normal date of maturity; in any case, the applicant must appraise the annuities, performances and rights undetermined, contingent and conditional, without prejudice to the application of Articles 2161 and following for the benefit of the debtor; and where the rights are contingent or conditional, he must summarily indicate the event or the condition upon which the existence of the claim depends. In the cases where the claim is backed with an index-linking clause, the registration must mention the original amount of the claim as well as the index-linking clause. Where the amount of the claim is not denominated in French currency, it must be immediately followed by its exchange value in French francs (euros) determined according to the latest rate of exchange known at the date of the title creating the claim;

5° The designation, in accordance with paragraphs 1 and 3 of Article 7 of the Decree of 4 January 1955, of each immovable respecting to which a registration is required;

6° The indication of the date, volume and number under which was registered the title of ownership of the debtor (or of the owner, where the debtor is not the owner of the immovables burdened), when that title is subsequent to 1 January 1956;

7° The certification that the amount of the capital of the secured claim mentioned in the schedule is not greater than that shown in the title creating the security or the claim.

The schedule designed to be kept in the land registry must contain, in addition, a mention of certification of the identity of the parties, prescribed by Articles 5 and 6 of the Decree of 4 January 1955.

A filing shall be refused:

1° Failing the presentation of the title creating the security or the claim as to mortgages and judicial securities;

2° Failing the mention referred to in paragraph 13, or where the immovables are not individually designated, with indication of the commune where they are situated.

Where the registrar, after having accepted the filing, notices the omission of one of the mentions prescribed by this Article, or a discrepancy between, on the one hand, the statements relating to the identity of the parties or to the designation of the immovables contained in the schedule, and, on the other hand, those same statements contained in schedules or titles already recorded since 1 January 1956, the formality shall be rejected, unless the applicant regularizes the schedule or produces the proof which establishes its accuracy, in which cases, the formality ranks on the date of the filing of the schedule noted in the register of filings.

A formality shall also be rejected where the schedules include an amount of secured claim greater than that which appears in the title as regards mortgaged and judicial securities, as well as in the case referred to in the first paragraph of this Article, where the applicant does not substitute a new schedule on a prescribed form to the schedule irregular as to form.

The decree above provided for shall determine the details of a refusal of a filing or of a rejection of a formality.

Art. 2148-1

(Act n° 79-2 of 2 Jan. 1979)

For the sake of their registration, prior charges and mortgages bearing on shares depending on a building subject to the status of co-ownership shall be deemed not to burden the portions of the common parts included in those shares.

Nevertheless, the registered creditors shall enforce their rights on the said portion taken in its consistence at the time of the transfer whose proceeds are the subject matter of the division; that portion shall be deemed burdened with the same securities as the individual shares and with those securities only.

Art. 2149

(D. n° 55-22 of 4 Jan. 1955)

Shall be recorded by the registrar, under the form of mentions in the margin of the existing registrations, the subrogations to prior charges and mortgages, withdrawals, reductions, assignments of priority and transfers which have been granted, extensions of time, changes of domicile and, as a general rule, any modifications, in particular as to the person of the creditor who benefits by the registration, which do not have the effect of worsening the condition of the debtor.

It shall be the same as to gratuitous transfers by inter vivos or testamentary instrument, on condition of restitution, bearing on claims secured by prior claims or mortgages.

(D. n° 59-89 of 7 Jan. 1959) The instruments and judicial decisions recording those different agreements or transfers and the copies, extracts, or office copies filed at the land registry for the purpose of the execution of the mentions shall contain the designation of the parties in accordance with the first paragraph of Articles 5 and 6 of the Decree of 4 January 1955. That designation need not be certified.

Furthermore, in case a modification mentioned bears only on part of the immovables burdened, the said immovables shall be individually designated, on pain of refusal of the filing.

Art. 2150

(Act of 1 March 1918)

The registrar shall mention the filing of the schedules on the register prescribed by Article 2200 hereinafter, and shall return to the applicant both the instrument of title or the office copy of the same, and one of the schedules at the bottom of which he shall mention the date of the filing, the volume and the number under which the schedule intended for the archives has been filed.

The date of the registration is determined by the mention entered into the register of filings.

The schedules intended for the archives shall be bound without being removed thanks to and at the expense of the registrars.

Art. 2151

(D. n° 59-89 of 7 Jan. 1959)

A creditor with a prior charge whose title has been registered , or a mortgage creditor registered for a capital producing interest and arrears, has the right to be marshalled, for three years only, on the same rank as for his principal, without prejudice to the special registrations to be made, importing mortgage from their date, for the interest and arrears other than those preserved by the original registration.

Art. 2152

(Act of 1 March 1918)

A person who has required a registration, as well as his representatives or assigns under an authentic instrument, are entitled to change at the land registry the domicile elected by him in that registration, provided they choose and designate a new one “situated in metropolitan France, in overseas départments or in the territorial authority of Saint-Pierre-et-Miquelon" (Act n° 98-261 of 6 April 1998).

Art. 2153 [repealed]

Art. 2154 (Ord . n° 67-839 of 28 Sept. 1967)

Registration preserves a prior charge or a mortgage up to the date which the creditor shall fix complying with the following provisions:

Where the principal of a secured obligation must be paid at one or several due dates, the extreme effective date of a registration made before the due date or the last due date provided for is, at most, two years after that due date without allowing however the duration of the registration to exceed thirty-five years.

Where the due date or the last due date is undetermined or where it is prior to or concomitant with the registration, the extreme effective date of that registration may not be more than ten years after the day of the formality.

Where an obligation is such that neither of the preceding paragraphs can be applied, the creditor may require either a single registration to secure the whole of the obligation up to the remotest date, or a distinct registration to secure each of the objects of that obligation up to a date determined in accordance with the provisions of the said paragraphs. It shall be the same where, the first of those paragraphs alone being applicable, the different objects of the obligation do not involve the same due dates or last due dates.

Art. 2154-1 (Ord . n° 67-839 of 28 Sept. 1967)

A registration ceases to produce effect where it has not been renewed at the latest at the date referred to in the first paragraph of Article 2154.

Each renewal must be required up to a determined date. That date shall be fixed as stated in Article 2154 by distinguishing according as to whether the due date or the last due date, even where it results from an extension of time, is determined or not and whether it is subsequent or not to the day of the renewal.

Renewal is compulsory, in case the registration has produced its statutory effect, in particular, in case of sale of the immovable burdened, until payment or deposit of the proceeds.

Art. 2154-2 (Ord . n° 67-839 of 28 Sept. 1967)

Where one of the periods of two years, ten years and thirty-five years referred to in Articles 2154 and 2154-1 has not been complied with, a registration does not have any effect beyond the date of the expiry of that period.

Art. 2154-3 (Ord . n° 67-839 of 28 Sept. 1967)

Where a provisional registration of the statutory mortgage of spouses or of a judicial mortgage has been made, the provisions of Articles 2154 to 2154-2 shall apply to the final registration and to its renewal. The date from which the periods shall begin to run is that of the final registration or of its renewal.

Art. 2155

(D. n° 55-22 of 4 Jan. 1955)

Unless otherwise stipulated, the expenses of the registrations shall be advanced by the registrant and charged to the debtor, and the expenses of the recording of the instrument of sale which a seller may require in view of the registration of his prior charge within the prescribed time, shall be charged to the seller.

Art. 2156

(D. n° 59-89 of 7 Jan. 1959)

Actions to which registrations may give rise against creditors shall be brought before the court having jurisdiction, by summons served upon their persons, or at the last of the domiciles elected by them on the schedules of registration, even in case of death, either of the creditors, or of those at whose residence they have elected domicile.

CHAPTER V - OF THE CANCELLATION AND REDUCTION OF REGISTRATIONS

Section I - General Provisions

Art. 2157

Registrations shall be cancelled by the consent of the parties concerned and having capacity therefor, or by virtue of a judgment not subject to appeal or having become res judicata.

Art. 2158

(D. n° 55-22 of 4 Jan. 1955)

In both cases, those who require the cancellation shall file at the registrar's office the office copy of the authentic instrument containing the consent, or that of the judgment.

(Ord. n° 67-839 of 28 Sept. 1967) No document in proof is required to support the office copy of the authentic instrument concerning the statements establishing the status, capacity and qualification of the parties, where those statements are certified as accurate by the notaire or the administrative authority.

Art. 2159

A cancellation without consent must be applied for before the court in whose territory the registration has been made, unless that registration was made to secure a contingent or undetermined judgment, on whose enforcement or determination the debtor and the alleged creditor are in litigation or which must be judged in another court; in which case the action for cancellation shall be brought or remitted there.

However, the agreement entered into by the creditor and the debtor to bring the action, in case of controversy, before a court which they have designated, shall be enforced between them.

Art. 2160

Cancellation must be ordered by the courts, where a registration was made without being based on legislation or on a title, or where it was made by virtue of a title either irregular or extinguished or satisfied, or where the rights of prior charge or of mortgage are wiped out by legal remedies.

Art. 2161

(D. n° 55-22 of 4 Jan. 1955)

Where the registrations made under Articles 2122 and 2123 are excessive, the debtor may apply for their reduction by complying with the rules of jurisdiction established by Article 2159.

Are deemed excessive the registrations which burden several immovables where the value of a single one or of some of them exceeds a sum equal to double of the amount of the claims in capital and statutory accessories, increased by one-third of that amount.

Art. 2162

(D. n° 55-22 of 4 Jan. 1955)

May also be reduced as excessive the registrations made according to an appraisal made by the creditor of conditional, contingent or undetermined claims whose amount was not fixed by the agreement.

In that case, the excess shall be appraised by the judges according to the circumstances, probabilities and presumptions of fact, in such a manner as to conciliate the rights of the creditor with the interest of preserving credit to the debtor, without prejudice to new registrations to be made with a mortgage from the day of their date, where events have caused the undetermined claims to a larger sum.

Section II - Particular Provisions Relating to Mortgages of Spouses and of Persons in Guardianship

Art. 2163

(Act n° 65-570 of 13 July 1965)

Where a statutory mortgage has been registered under Articles “2136 or 2137” (Act n° 85-1372 of 23 Dec. 1985), and except for an express clause of the ante-nuptial agreement which forbids it, the spouse who profits by the registration may give a total or partial withdrawal of it.

It shall be the same as to a statutory mortgage, or possibly a judicial mortgage securing periodical payments ordered, or liable to be ordered “to a spouse, for himself or herself” (Act n° 85-1372 of 23 Dec. 1985) or for the children

Where the spouse who profits by the registration, by refusing to reduce the mortgage or to give a withdrawal of it, prevents the other spouse from creating a mortgage or making a transfer which the interest of the family would require or where he or she is unable to express his or her intention, the judges may authorize that reduction or withdrawal subject to the conditions which they deem necessary for the protection of the rights of the spouse concerned. They have the same powers where the ante-nuptial agreement contains the clause referred to in the first paragraph.

Where a mortgage has been registered under Article 2138, the registration may, for the duration of the transfer of administration, be cancelled or reduced only by virtue of a judgment of the court which has ordered that transfer.

As soon as the transfer of administration comes to an end, a cancellation or reduction may be made in the way provided for in paragraphs 1 and 3 above.

Art. 2164

(Act n° 64-1230 of 14 Dec. 1964)

Where the value of the immovables on which the mortgage of a minor or of an adult in guardianship has been registered notably exceeds what is necessary to secure the management of the guardian, the latter may request the family council to reduce the registration to the immovables which are sufficient.

He may likewise request it to reduce the appraisal which has been made of his obligations towards the ward.

In the same cases, where a registration has been made on his immovables under Article 2143, a statutory administrator may request the judge of guardianships to reduce it, either as to the immovables burdened, or as to the sums secured.

Furthermore, if there is occasion, a guardian and a statutory administrator may, subject to the same conditions, request a total withdrawal of the mortgage.

The total or partial cancellation of the mortgage shall be made upon presentation of an instrument of withdrawal signed by a member of the family council having received delegation to that effect, as to the immovables of a guardian, and upon presentation of a judgment of the judge of guardianships, as to the immovables of a statutory administrator.

Art. 2165

(Act n° 65-670 of 13 July 1965)

Judgments on request of a spouse, a guardian or a statutory administrator in the cases provided for in the preceding Articles shall be handed down in the forms regulated in the Code of Civil Procedure.

(D. n° 55-22 of 4 Jan. 1955) Where the court orders the reduction of a mortgage to certain immovables, the registrations made on all the others shall be cancelled.

CHAPTER VI - OF THE EFFECT OF PRIOR CHARGES AND MORTGAGES AGAINST THIRD PARTIES IN POSSESSION

Art. 2166

(Ord. n° 59-71 of 7 Jan. 1959)

Creditors who have a prior charge or a mortgage registered on an immovable, follow it in whatever hands it may pass, in order to be marshalled and paid following the order of their claims or registrations.

Art. 2167

Where a third party in possession does not comply with the formalities hereinafter established to free his property, he remains, by the sole effect of the registrations, liable as a possessor for all the mortgage debts and has the benefit of the time limits and periods granted to the original debtor.

Art. 2168

A third party in possession is bound, in the same case, either to pay all the interest and capital due, to whatever sum they may amount, or to relinquish the mortgaged immovable, unreservedly.

Art. 2169

Where a third party in possession fails to comply fully with one of these obligations, each mortgagee is entitled to have the immovable sold against him, thirty days after serving an order to pay on the original debtor, and demanding that the third party in possession pay the debt due or relinquish the property.

Art. 2170

Nevertheless, a third party in possession who is not personally liable for the debt, may object to the sale of the mortgaged property which has been transferred to him, where other immovables mortgaged for the same debt have remained in the possession of the principal debtor or debtors, and require their previous seizure and sale in the manner regulated in the Title Of Suretyship ; during these proceedings, the sale of the mortgaged property shall be postponed.

Art. 2171

The defence of seizure and sale is not available against a creditor who benefits by a prior charge or who has a special mortgage on the immovable.

Art. 2172

As to relinquishment by reason of a mortgage, it may be done by all third parties in possession who are not personally liable for the debt and who have the capacity to transfer.

Art. 2173

It may be done even after the third party in possession has acknowledged the debt or where a judgment has been given against him in that capacity only: until a sale by auction, relinquishment does not prevent a third party in possession from taking back the immovable by paying the whole debt and the costs.

Art. 2174

Relinquishment by reason of a mortgage shall be made at the clerk's office of the court of the situation of the property; and that court shall record it.

On the petition of the most diligent party concerned, a curator shall be appointed for the immovable relinquished, against whom the sale of the immovable shall be conducted in the forms prescribed for forced sales.

Art. 2175

Deteriorations resulting from the act or negligent conduct of a third party in possession, to the detriment of creditors benefiting by a mortgage or a prior charge, give rise against him to an action for compensation; but he recovers his upkeep and improvements only up to the additional value resulting from the improvement.

Art. 2176

The fruits of the mortgaged immovable are owed by a third party in possession only from the day of the demand to pay or relinquish, and, where the proceedings instituted have been discontinued for three years, from the new demand which will be made.

Art. 2177

Servitudes and rights in rem which the third party in possession had on the immovable before his possession, are revived after the relinquishment or after the sale by auction made against him.

His personal creditors, after all those who are registered on the previous owners, shall enforce their mortgage on the property relinquished or auctioned, according to their rank.

Art. 2178

A third party in possession who has paid the mortgage debt, or relinquished the immovable, or suffered the forced sale of that immovable has a remedy for warranty, as allowed by law, against the principal debtor.

Art. 2179

A third party in possession who wishes to redeem his property by paying the price must comply with the formalities which are established in Chapter VIII of this Title.

CHAPTER VII - OF THE EXTINGUISHMENT OF PRIOR CHARGES AND MORTGAGES

Art. 2180

Prior charges and mortgages are extinguished :

1° By extinguishment of the principal obligation;

2° By the creditor’s renunciation of the mortgage;

3° By the fulfilment of the formalities and conditions prescribed to third parties in possession to redeem the property which they have acquired;

4° By prescription.

Prescription is acquired to a debtor, as to the property which is in his hands, by the time prescribed by the statute of limitations in respect of the actions which give a mortgage or a prior charge.

(Ord. n° 59-71 of 7 Jan. 1959) As to the property which is in the hands of a third party in possession, it is acquired by him by the time regulated for prescription of ownership for his benefit: in the case where prescription depends upon a title, it begins to run only from the day when that title has been recorded in the land registry of the situation of the immovables.

Registrations made by a creditor do not interrupt the running of the prescription established by law in favour of the debtor or of the third party in possession.

CHAPTER VIII - OF THE MODE OF REDEEMING PROPERTY FROM PRIOR CHARGES AND MORTGAGES

Art. 2181

(Ord. n° 59-71 of 7 Jan. 1959)

Contracts which transfer the ownership of immovables or immovable rights in rem which third parties in possession wish to redeem from prior charges and mortgages shall be recorded in the land registry of the situation of the property, in accordance with the statutes and regulations relating to land registration.

Art. 2182

(Ord. n° 59-71 of 7 Jan. 1959)

The mere recording in the land registry of the conveyances does not redeem an immovable from mortgages and prior charges which burden it.

A seller conveys to a purchaser only the ownership and the rights he himself had on the thing sold: he conveys them subject to the same prior charges and mortgages of which the thing sold was burdened.

Art. 2183

(Ord. n° 59-71 of 7 Jan. 1959)

Where a new owner wishes to protect himself against the effect of the proceedings authorized in Chapter VI of this Title, he is bound, either before the proceedings, or within one month, at the latest, after the first demand which is made to him, to serve on the creditors, at the domiciles they have elected in their registrations, notice of:

1° An extract of his title, containing only the date and character of the instrument, the name and precise designation of the seller, or of the donor, the nature and situation of the thing sold or donated; and where a set of items of property is concerned, only the general designation of the domain and of the arrondissements in which it is situated, the price and the costs forming part of the sale price, or the appraisal of the thing where it has been donated;

2° An extract of the recording of the instrument of sale;

3° A table in three columns, of which the first shall contain the dates of the mortgages and those of the registrations; the second, the names of the creditors; the third, the amount of the claims registered.

Art. 2184

The purchaser or the donee shall declare, in the same instrument, that he is ready to pay, forthwith, the mortgage debts and charges, only up to the amount of the price, without distinction between debts due or not due.

Art. 2185

Where the new owner has served that notice within the fixed period, any creditor whose title has been registered, may require the sale of the immovable by public auction, provided:

1° That the request is served on the new owner within forty days, at the latest, of the notice served at his request, adding two days per five myriametres of distance between the elected domicile and the real domicile of each requiring creditor;

2° That it contains undertaking of the requesting party to raise the price, or to have it raised, to one-tenth above the one stipulated in the contract, or declared by the new owner;

3° That the same notice is served within the same period on the previous owner, principal debtor;

4° That the original and the copies of these notices are signed by the requiring creditor, or by his agent with express authority, who, in that case, is obliged to give a copy of his power of attorney;

5° That he offers to give security up to the amount of the price and charges.

All of which, on pain of annulment.

Art. 2186

Where the creditors have failed to require a sale by auction within the period and in the manner prescribed, the value of the immovable remains definitely fixed at the price stipulated in the contract, or declared by the new owner, who is in consequence discharged from all prior charge and mortgage, by paying the said price to the creditors who are allowed to receive it according to their rank, or by depositing it.

Art. 2187

In case of a resale by auction, it shall take place by complying with the forms established for forced sales, at the suit either of the creditor who has required it, or of the new owner.

The party seeking execution shall state in the placards the price stipulated in the contract, or declared, and the additional sum to which the creditor has obliged himself to raise it or to have it raised.

Art. 2188 (Ord n° 59-71 of 7 Jan. 1959)

The highest bidder is obliged, beyond the auction price, to return to the dispossessed purchaser or donee the expenses and proper costs of his contract, those of the registration at the land registry, those of the notices and those incurred by him to have the resale made.

Art. 2189 (Ord n° 59-71 of 7 Jan. 1959)

A purchaser or donee who retains the immovable put up for auction, by becoming the highest bidder, is not obliged to have the judgment enforcing the auction registered.

Art. 2190

The withdrawal of the creditor who has required a sale by auction may not prevent the public auction, even where the creditor pays the amount of the bid, unless all the other mortgagees expressly agree thereto.

Art. 2191

A purchaser who has become the final bidder has his remedy such as allowed by law against the seller, for the repayment of what exceeds the price stipulated by his title, and for the interest of that excess, from the day of each payment.

Art. 2192

In the case where the title of the new owner includes immovables and movables, or several immovables, some mortgaged and some not, situated in the same or in several arrondissements of registries, transferred for one and the same price, or for distinct or separate prices, forming part or not of the same business, the price of each immovable subject to particular and separate registrations, shall be declared in the notice of the new owner, by itemizing the total price expressed in the title, if there is occasion.

A creditor who outbids may in no case be compelled to extend his bid either over the movables, or over immovables other than those which are mortgaged for his claim and situated in the same arrondissement; but the new owner has a remedy against his predecessors in title for compensation for the loss which he may suffer, either from the division of the objects of his purchase, or from that of the business.

CHAPTER IX - Art. 2193 to 2195 [repealed by implication]

CHAPTER X - OF THE PUBLIC INSPECTION OF REGISTERS AND OF THE RESPONSIBILITY OF REGISTRARS

Art. 2196

(D. n° 55-22 of 4 Jan. 1955)

Land registrars are obliged to deliver to all those who so require a copy or extract of the documents, other than the schedules of registration, filed at their registry within the limit of fifty years preceding that of the demand, and a copy or extract of the subsisting registrations, “or a certificate to the effect that there exists no document or registration coming within the scope of the request” (Ord. n° 67-839 of 28 Sept. 1967).

They are also obliged to deliver upon demand, within a period of ten days, copies of or extracts from the land register “or a certificate to the effect that there exists no entry coming within the scope of the request” (Ord. n° 67-839 of 28 Sept. 1967).

Art. 2197

(D. n° 59-89 of 7 Jan. 1959)

They are responsible for the loss resulting:

1° From failure to record instruments and judicial decisions filed at their registries, and required registrations, any time that failure to record does not result from a decision of refusal or of rejection;

2° From the omission, in the certificates which they deliver, of one or several of the existing registrations, unless, in this latter case, the error comes from insufficient or inaccurate designations which may not be ascribed to them.

Art. 2198

(Ord. n° 67-839 of 28 Sept. 1967)

Where a registrar, delivering a certificate to the new holder of a right referred to in Article 2181, omits a registration of a prior charge or mortgage, the right remains in the hands of the new holder free from the undisclosed prior charge or mortgage, provided the delivery of the certificate has been required by the party concerned as a consequence of the recording of his title. Without prejudice to his possible remedy against the registrar, the creditor who benefits by the omitted registration does not lose the right to avail himself of the rank which that registration

confers on him so long as the price has not been paid by the purchaser or as intervention in the ranking initiated between the other creditors is permitted.

Art. 2199

(D. n° 59-89 of 7 Jan. 1959)

Except in the cases where they are entitled to refuse a filing or to reject a formality, in accordance with the provisions of statutes and regulations relating to land registration, registrars may not refuse or delay the fulfilment of a formality or the delivery of documents duly required, on pain of damages to the parties; for that purpose, memoranda of refusals or delays shall be, at the suit of the requiring party, forthwith drawn up, either by a judge of the tribunal d'instance, or by a court usher of the court, or by another bailiff or a notaire with the assistance of two witnesses.

Art. 2200

(D. n° 59-89 of 7 Jan. 1959)

Registrars are obliged to have a register in which they shall enter, day by day and in numerical order, the filings made with them of instruments, judicial decisions, schedules and, generally, of documents filed for the purpose of the execution of a formality of registration.

They may fulfil the formalities only at the date and in the order of the filings made with them.

(D. n° 60-4 of 6 Jan. 1960) Each year a duplicating of the registers closed during the preceding year shall be deposited without cost at the clerk's office of a tribunal de grande instance or of a tribunal d'instance situated in an arrondissement different from the one where the registrar resides.

(D. n° 55-22 of 4 Jan. 1955) The court in whose clerk's office the duplicating will be deposited shall be designated by an order of the Minister of Justice.

A decree shall determine the details of application of this Article and, in particular, the technical processes which may be used for the making of the duplicating to be deposited at the clerk's office.

Art. 2201

(D. n° 59-89 of 7 Jan. 1959)

A register kept in compliance with the preceding Article shall be numbered and initialled upon each page, by first and last, by the juge d'instance in whose territory the registry is established. It shall be closed every day.

(Act n° 98-261 of 6 April 1998) Notwithstanding the preceding paragraph, a written data-processing document may take the place of a register; in that case, it must be identified, numbered and dated as soon as it is established by wholly trustworthy forms of proof.

Art. 2202

(Act n° 46-2154 of 7 Oct. 1946)

In performing their duties, registrars are obliged to comply with all the provisions of this Chapter, on pain of a fine "from 200 to 2 000 francs (30 to 300 €)" (Act n° 56-780 of 4 Aug. 1956) for the first infringement, and of dismissal for the second; without prejudice to damages to the parties, which shall be paid before the fine.

Art. 2203

(Ord. N° 59-71 of 7 Jan. 1959)

The mentions of the filings shall be made on the register whose keeping is prescribed by Article 2200, following each other, without any blank or interlineations, on pain, against the registrar, of a fine of 400 to 4 000 francs (60 to 600 €), and of damages to the parties, also payable by priority over the fine.

Art. 2203-1

(Act n° 98-261 of 6 April 1998)

In the land registries whose register is kept in accordance with the provisions of Article 2201, paragraph 2, there shall be delivered a certificate of the formalities accepted for filing and awaiting recording in the land register on the immovables individually designated in the request for information. A decree in Conseil d'État shall specify the contents of that certificate.

TITLE XIX

OF FORCED SALES AND OF RANKING AMONG CREDITORS

CHAPTER I - OF FORCED SALES

Art. 2204

A creditor may sue for a forced sale: 1° of immovable property and of its accessories deemed to be immovables belonging in ownership to his debtor; 2° of a usufruct belonging to his debtor on property of the same nature.

Art. 2204-1

(Act n° 72-626 of 5 July 1972)

The proceedings and forced sale produce towards the parties and third parties the effects determined by the Code of Civil Procedure.

Art. 2205 [repealed]

Art. 2206

The immovables of a minor, even emancipated, or of an adult in guardianship may not be put up for sale before seizure and sale of the movables.

Art. 2207

Seizure and sale of the movables are not required before a forced sale of the immovables possessed in undivided ownership by an adult and a minor or an adult in guardianship, where the debt is common to them, or where proceedings have been initiated against an adult or before the guardianship of adults.

Art. 2208 [repealed]

Art. 2209

A creditor may enforce the sale of the immovables which are not mortgaged to him, only in the case of insufficiency of the property mortgaged to him.

Art. 2210

A forced sale of items of property situated in different arrondissements may only be instigated successively, unless they are part of a same business.

It shall take place in the court in whose territory the main place of the business is, or failing a main place, the part of the property which brings in the greatest income, according to the assessment roll.

Art. 2211

Where the items of property mortgaged to the creditor and those not mortgaged, or those situated in different arrondissements, form part of one and the same business, the sale of the whole shall be enforced at the same time, if the debtor so requires; and the proceeds of the auction shall be itemized, if there is occasion.

Art. 2212

Where a debtor proves, by authentic leases, that the net and free income of his immovables for a year, is sufficient for payment of the debt in capital, interest and costs, and where he offers the assignment thereof to the creditor, the proceedings may be suspended by the judges, subject to their being resumed if there occurs some attachment or obstacle to the payment.

Art. 2213

A forced sale of immovables may be enforced only under a judgment or an authentic instrument, for a certain and liquid debt. Where the debt is for a ready money, not liquidated, the proceedings are valid; but the auction may be held only after the liquidation.

Art. 2214

The assignee of a judgment or of an authentic instrument may sue for a forced sale only after notice of the assignment has been served on the debtor.

Art. 2215

The proceedings may take place under a provisional or final judgment, provisorily enforceable, notwithstanding an appeal; but an auction may be made only after a final judgment, without possibility of appeal, or become res judicata.

The proceedings may not be instituted under default judgments during the period for application to set the judgment aside.

Art. 2216

Proceedings may not be annulled on the pretext that the creditor has instituted them for a larger sum than what is owed to him.

Art. 2217

Any proceedings for forced sale must be preceded by an order to pay served, at the suit and request of the creditor, on the person of the debtor or at his domicile, through a bailiff.

“For purpose of their being recorded, the orders to pay bearing on shares depending on an immovable subject to the status of co-ownership shall be deemed not to bear on the portion of common parts which is included in those shares.

“Nevertheless, the seizing creditors shall enforce their rights on the said portion, taken in its consistence at the time of the transfer whose proceeds are the subject matter of the division” (Act n° 79-2 of 2 Jan. 1979).

The forms of the order to pay and those of the proceedings for a forced sale are regulated by the laws relating to procedure.

CHAPTER II - OF THE RANKING OF CREDITORS AND THE DIVISION OF THE PROCEEDS BETWEEN THEM

Art. 2218

The ranking of the creditors and the division of the proceeds of the immovables and the manner of proceeding thereto are regulated by the laws on procedure.

TITLE XX

OF PRESCRIPTION AND OF POSSESSION

CHAPTER I - GENERAL PROVISIONS

Art. 2219

Prescription is a manner of acquiring or of discharging oneself at the end of a certain time and subject to the conditions determined by law.

Art. 2220

Prescription may not be renounced beforehand: a prescription which has accrued may be renounced.

Art. 2221

A renunciation of prescription is express or implied: implied renunciation results from an act which implies waiver of the right acquired.

Art. 2222

A person who has not the power of alienation does not have the power of renunciation of a prescription which has accrued. .

Art. 2223

Judges may not supply of their own motion a plea of prescription.

Art. 2224

Prescription may be set up at all stages of a case, even before a court of appeal, unless the party who had not set up the plea of prescription should be presumed, by reason of the circumstances, to have renounced it.

Art. 2225

Creditors, or any other person having an interest in the prescription's being accrued, may set it up, although the debtor or owner renounces it.

Art. 2226

One may not prescribe the ownership of things which may not be the subject matter of legal transactions between private individuals.

Art. 2227

The State, public institutions and communes are subject to the same prescriptions as private individuals, and may likewise set them up.

CHAPTER II - OF POSSESSION

Art. 2228

Possession is the detention or enjoyment of a thing or of a right which we hold or exercise by ourselves, or by another who holds and exercises it in our name.

Art. 2229

In order to be allowed to prescribe, one must have a continuous and uninterrupted, peaceful, public and unequivocal possession, and in the capacity of an owner.

Art. 2230

One is always presumed to possess for oneself, and in the capacity of an owner, where it is not proved that one has begun by possessing for another.

Art. 2231

Where one has begun by possessing for another, one is always presumed to possess in the same capacity, unless there is proof to the contrary.

Art. 2232

Acts which are merely allowed or simply tolerated may not give rise to possession or prescription.

Art. 2233

Acts of duress may not give rise to a possession capable of bringing about prescription either.

Possession begins to produce effects only from the time the duress has ceased.

Art. 2234

A present possessor who proves that he has formerly possessed, is presumed to have possessed during the intervening time, unless there is proof to the contrary.

Art. 2235

To complete a prescription, one may join to one's possession that of one's predecessor, in whatever manner one may have succeeded to him, whether by virtue of a universal or specific title, or for value or gratuitously.

CHAPTER III - OF THE CAUSES WHICH PREVENT PRESCRIPTION

Art. 2236

Those who possess for another never acquire ownership by prescription, whatever the time elapsed may be.

Thus a farm tenant, a depositary, a usufructuary, and all those who precariously hold the thing of an owner, may not prescribe it.

Art. 2237

The heirs of those who held the thing on any of the bases designated in the preceding Article, may not prescribe either.

Art. 2238

.-Nevertheless, the persons mentioned in Articles 2236 and 2237 may prescribe where the basis of their possession is reversed, either owing to a cause arising from a third party, or by an adverse claim they have raised against the right of the owner.

Art. 2239

Those to whom farm tenants, depositaries or usufructuaries and other persons who hold precariously have transmitted the thing by a conveyance, may prescribe it.

Art. 2240

One may not prescribe against one's own title, in the sense that one may not modify as to himself the cause and principle of his possession.

Art. 2241

One may prescribe against one's title, in the sense that one prescribes the discharge of an obligation which one has contracted.

CHAPTER IV - OF THE CAUSES WHICH INTERRUPT OR SUSPEND THE RUNNING OF PRESCRIPTION

Section I - Of the Causes which Interrupt Prescription

Art. 2242

Prescription may be interrupted either naturally or according to law.

Art. 2243

Natural interruption takes place where a possessor is deprived of the enjoyment of the thing, for more than one year, either by the previous owner, or even by a third person.

Art. 2244

(Act n° 85-677 of 5 July 1985)

A service of process, even for interim relief, an order to pay or a seizure, on the person whom one wishes to prevent from prescribing, interrupt prescription, as well as the periods within which an action must be brought.

Art. 2245

An application for conciliation before the [tribunal d'instance] interrupts prescription from the day of its date, where it is followed by a service of process in due time.

Art. 2246

A service of process, even before a judge without jurisdiction, interrupts prescription.

Art. 2247

Where a summons is void by infringement of a procedural requirement,

Where the plaintiff discontinues his action,

Where he leaves the suit to lapse,

Or where he is defeated in his claim,

Interruption shall be deemed never to have occurred.

Art. 2248

Prescription is interrupted where the debtor or possessor acknowledges the right of the person against whom he was prescribing.

Art. 2249

A service of process made in accordance with the above Articles upon one of the joint and several debtors, or his acknowledgement, interrupts prescription against all the others, and even against their heirs.

A service of process made upon one of the heirs of a joint and several debtor or an acknowledgement by that heir does not interrupt prescription against the other coheirs, even if the claim is secured by a mortgage, where it is not indivisible.

That service of process or that acknowledgement interrupts prescription, with regard to the other co-debtors, only for the share for which that heir is liable.

In order to interrupt prescription for the whole, with regard to the other co-debtors, it is necessary to have a service made on all the heirs of the deceased debtor, or an acknowledgement of all the heirs.

Art. 2250

A service made upon a principal debtor, or his acknowledgement, interrupts prescription against the surety.

Section II – Of the Causes which Suspend the Running of Prescription

Art. 2251

Prescription runs against all persons, unless they come within some exception established by law.

Art. 2252

(Act n° 64-1230 of 14 Dec. 1964)

Prescription does not run against non-emancipated minors and adults in guardianship, except for what is stated in Article 2278 and with the exception of the other cases determined by law.

Art. 2253

It does not run between spouses.

Art. 2254

Although there is no separation resulting from an ante-nuptial agreement or a judgment, prescription runs against a married woman, with regard to the property of which the husband has the administration, subject to her remedy against the husband.

Art. 2255 and 2256 [repealed]

Art. 2257

The statute of limitations does not run :

With regard to a claim which depends upon a condition, until that condition occurs;

With regard to an action on a warranty, until dispossession has taken place;

With regard to a claim on a fixed day, until that day has occurred.

Art. 2258

The statute of limitations does not run against a heir under benefit of inventory, with regard to claims which he has against the succession.

It runs against a succession which is vacant, although not provided with a curator.

Art. 2259

It still runs during the three months allowed for making an inventory and the forty days for deliberating.

CHAPTER V - OF THE TIME REQUIRED TO PRESCRIBE

Section I - General Provisions

Art. 2260

Prescription is counted by days and not by hours.

Art. 2261

It accrues when the last day of the period is over.

Section II - Of Thirty-Year Prescription

Art. 2262

All actions, in rem as well as in personam, are prescribed by thirty years, without the person who alleges that prescription being obliged to adduce a title, or a plea resulting from bad faith being allowed to be set up against him.

Art. 2263

After twenty-eight years from the date of the last instrument of title, the debtor of an annuity may be compelled to furnish at his expense a new instrument to his creditor or to his assigns.

Art. 2264

The rules of prescription on matters other than those mentioned in this Title are explained in the Titles which relate to them.

Section III - Of Ten- and Twenty-Year Prescription

Art. 2265

A person who acquires an immovable in good faith and under a just title prescribes ownership of it by ten years, where the true owner lives on the territory of the court of appeal within whose limits the immovable is situated; and by twenty years, where he is domiciled outside of the said territory.

Art. 2266

Where the true owner has had his domicile at different times, within and outside the territory, one must, in order to complete the prescription, add to what is lacking to make up ten years of presence, a number of years of absence twice what is lacking to complete the ten years of presence.

Art. 2267

An instrument which is void for a defect as to its form may not serve as the basis for a prescription by ten and twenty years.

Art. 2268

Good faith is always presumed, and it is on the person who alleges bad faith to prove it.

Art. 2269

It is sufficient that good faith has existed at the time of the acquisition.

Art. 2270

(Act n° 78-12 of 4 Jan. 1978)

Any natural or juridical person who may be liable under Articles 1792 to 1792-4 of this Code is discharged from the liabilities and warranties by which they are weighed down in application of Articles 1792 to 1792-2, after ten years from the approval of the works or, in application of Article 1792-3, on the expiry of the period referred to in this Article.

Art. 2270-1

(Act n° 85-677 of 5 July 1985)

Actions for tort liability are barred after ten years from the manifestation of the injury or of its aggravation.

(Act n° 98-468 of 17 June 1998) Where the injury is caused by torture and acts of cruelty, assault or sexual aggressions committed against a minor, the action in tort liability is barred after twenty years.

Section IV - Of Some Particular Prescriptions

Art. 2271

(Act n° 71-586 of 16 July 1971)

The action of teachers and schoolmasters of sciences and arts for the lessons which they give by the month;

That of innkeepers and caterers for reason of board and lodging which they furnish, are barred after six months.

Art. 2272

(Act n° 71-586 of 16 July 1971)

The action of bailiffs, for the fees of the instruments they serve and the commissions which they perform;

That of the masters of boarding schools, for the boarding fees of their pupils, and of the other masters for the price of the apprenticeship, are barred after one year.

The action of physicians, surgeons, dental surgeons, midwives and pharmacists, for their visits, operations, and medicines, is barred after two years.

The action of merchants, for the goods which they sell to private individuals who are not merchants, is barred after two years.

Art. 2273

The action of counsels for the payment of theirs costs and fees, is barred after two years, from the judgment in the proceedings or from the conciliation of the parties, or since the revocation of the said counsels. As to cases not closed, they may not institute judicial proceedings for their costs and fees which date back more than five years.

Art. 2274

In the above cases, limitation takes place although the supplies, deliveries, services and works have been continued.

The statute of limitation ceases to run where there was an account stated, acknowledgment in writing or a summons which has not lapsed.

Art. 2275

Nevertheless, the persons against whom those limitations are raised may tender the oath to those who raise them, on the question of knowing whether the thing has really been paid.

The oath may be tendered to widows and heirs, or to the guardians or the latter, where they are minors, in order to have them declare that they were not aware of the thing being owed.

Art. 2276

(Act n° 71-586 of 16 July 1971)

Judges as well as the persons who have represented or assisted the parties are no longer chargeable for the papers and documents five years after the judgment or the end of their duties.

Bailiffs are also no longer chargeable after two years since the performance of the commission or the service of instruments of which they had the responsibility.

Art. 2277

(Act n° 71-538 of 7 July 1971)

The actions for payment:

Of salaries;

Of arrears of perpetual and life annuities and those of periodical payments;

Of rents and farm rents;

Of interest of sums loaned,

and generally of everything which is payable annually or at shorter periodical times, are barred after five tears

Art. 2277-1

(Act n° 89-906 of 19 Dec. 1989)

An action directed against persons statutorily empowered to represent or assist parties in court by reason of the liability which they thus incur is barred after ten year from the end of their duties.

Art. 2278

The limitations in question in the Articles of this Section, run against minors and adults in guardianship; subject to their remedy against their guardian.

Art. 2279

In matters of movables, possession is equivalent to a title.

Nevertheless, the person who has lost or from whom a thing has been stolen, may claim it during three years, from the day of the loss or of the theft, against the one in whose hands he finds it, subject to the remedy of the latter against the one from whom he holds it.

Art. 2280

Where the present possessor of a thing lost or stolen has bought it at a fair or market, or at a public sale, or from a merchant selling similar things, the original owner may have it returned to him only by reimbursing the possessor for the price which it has cost him.

(Act of 11 July 1892) A lessor who claims, under Article 2102, the movables displaced without his consent and which have been bought in the same conditions, must likewise reimburse the buyer for the price which they have cost him.

Art. 2281

Prescriptions commenced at the time of the publication of this Title shall be regulated in accordance with former laws.

Nevertheless, prescriptions then commenced and for which, under the former laws, would still be necessary more than thirty year from the same time, shall become complete by that period of thirty years.

CHAPTER VI- OF THE MODE OF PROTECTING POSSESSION

(Act n° 75-596 of 9 July 1975)

Art. 2282

Possession is protected, regardless of the substance of the right, against disturbance which affects or threatens it.

Protection of possession is also granted to a person who holds a thing against all other than the one from whom he holds his rights.

Art. 2283

Actions for the protection of possession may be brought by those who possess or hold peacefully in the way provided for by the Code of Civil Procedure.

BOOK FOUR PROVISIONS APPLICABLE IN MAYOTTE

(Ord.n° 2002-1476 of 19 Dec. 20021)

1 Shall come into force on 1 June 2004

Art. 2284.

- This Code shall apply in Mayotte subject to the conditions set out in this Book.

Art. 2285.-

For the implementation of this Code in Mayotte, the terms listed below shall be replaced as follows:

1° "Tribunal de grande instance" or "tribunal d'instance" by: "tribunal de première instance";

2° "Court" or "Court of appeal" by: "tribunal supérieur d'appel";

3° "Juge d'instance" by: "presiding judge of the tribunal de première instance or his deputy";

4° "Département" or "arrondissement" by: "collectivité départementale";

5° "Code of civil procedure" or "new Code of civil procedure" by: "provisions as to civil procedure applicable in Mayotte".

PRELIMINARY TITLE

PROVISIONS RELATED TO THE PRELIMINARY TITLE

Art. 2286.

- Articles 1 to 6 shall apply in Mayotte.

TITLE ONE PROVISIONS RELATED TO BOOK ONE

Art. 2287.

- Articles 7 to 32-5 and 34 to 515-8 shall apply in Mayotte.

Art. 2288.

- For its implementation in Mayotte, Article 26, paragraph 1, is worded as follows:

"Declarations of nationality shall be received by the presiding judge of the tribunal de première instance or his deputy in the form prescribed by decree* in Conseil d'État".

Art. 2289

.- For its implementation in Mayotte, Article 55, paragraph 1, is worded as follows:

"Declarations of birth shall be made within fifteen days of the delivery to the officer of civil status of the place".

Art. 2290

.- Articles 57 and 61-3 shall apply in the wording of Act n° 93-22 of 8 January 1993 which modifies the Civil Code as to civil status, family and the rights of the child and establishes a family causes judge.

Amendments made to these Articles by Act n° 2002-304 of 4 March 2002 relating to the family name shall come into force in Mayotte on 1 January 2007.

Art. 2291

.- Article 331, 331-2, 332-1, 334-2 and 334-5 shall apply in Mayotte in the wording of Act n° 93-22 of 8 January 1993.

Articles 333-4, 333-6, 334-1 shall apply in Mayotte in the wording of Act n° 72-3 of 3 January 1972.

Article 333-5 shall apply in Mayotte in the wording of Act n° 87-570 of 22 July 1987.

Amendments made to these Articles by Act n° 2002-304 of 4 March 2002 relating to the family name and Articles 311-21 and 311-22 shall come into force in Mayotte on 1 January 2007.

Art. 2292

.- Articles 354, 361 and 363 shall apply in Mayotte in the wording of Act n° 93-22 of 8 January 1993.

Amendments made to these Articles by Act n° 2002-304 of 4 March 2002 relating to the family name shall come into force in Mayotte on 1 January 2007.

Art. 2293

.- For the implementation in Mayotte of Articles 515-3 and 515-7, the words "court office of the tribunal d'instance" are replaced by "court office of the tribunal de première instance".

TITLE TWO PROVISIONS RELATED TO BOOK TWO

Art. 2294.

- Articles 516 to 710 shall apply in Mayotte subject to the adaptations specified in Articles 2295 and 2296.

Art. 2295

.- For the implementation of Article 524, paragraph 9, fishes in stretches of water unconnected with watercourses, canals and streamlets and fishes in piscicultures and piscicultural enclosures shall be treated as immovables by destination when they have been placed by the owner for the use and working of the tenement.

Art. 2296

.- For the implementation of Article 564, the words: "or stretches of water referred to in Articles 432 and 433 [L. 231-6 and L. 231-7] of the Rural Code [now Articles L. 431-6 and L. 431-7 of the Code of the Environment]" shall be replaced by: "piscicultures or piscicultural enclosures".

TITLE THREE PROVISIONS RELATED TO BOOK THREE

Art. 2297

.- Articles 711 to 832-2, 832-4 to 2283 shall apply in Mayotte subject to the adaptations specified in Articles 2298 to 2302.

Art. 2298

.- The provisions of Article 832, paragraph 5 and those of Article 832-2, paragraphs 2, 3 and 5 shall not apply in Mayotte.

Art. 2299

.- For the implementation in Mayotte of Article 832-4, paragraph 1, the words: "832, 832-1, 832-2 and 832-3" shall be replaced by the words: "832, 832-1 and 832-2".

For the implementation of Article 832-4, paragraph 2, the words "832, 832-2 and 832-3" shall be replaced by the words: "832 and 832-2".

Art. 2300

.- In Article 1069, the words: "following the prescriptions of Articles 2148 and 2149, paragraph 2, of this Code" shall be replaced by the words: "following the rules locally applicable in matters of registration of prior charges and mortgages".

Art. 2301.

- For the implementation in Mayotte of Article 1873-13, the words: "832 to 832-3" shall be replaced by the words: "832 to 832-2".

Art. 2302.

- The provisions of Titles XVII, XVIII and XIX of Book Three shall apply in Mayotte as they are altered by the provisions of the decree of 4 February 1911 reorganizing the system of ownership in land in Madagascar, amended by the decree of 6 May 1916, and the decree of 9 June 1931 reorganizing the system of ownership in land in the Comoro Archipelago and suppressing the land registry in Dzaoudzi.